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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
Appellant,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Appellees.
No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation,
Appellant,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Appellees.
No. 471

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Appellants,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Appellees.
No. 472

BRIEF OF AMICI CURIAE IN BEHALF OF CITY OF LOS ANGELES

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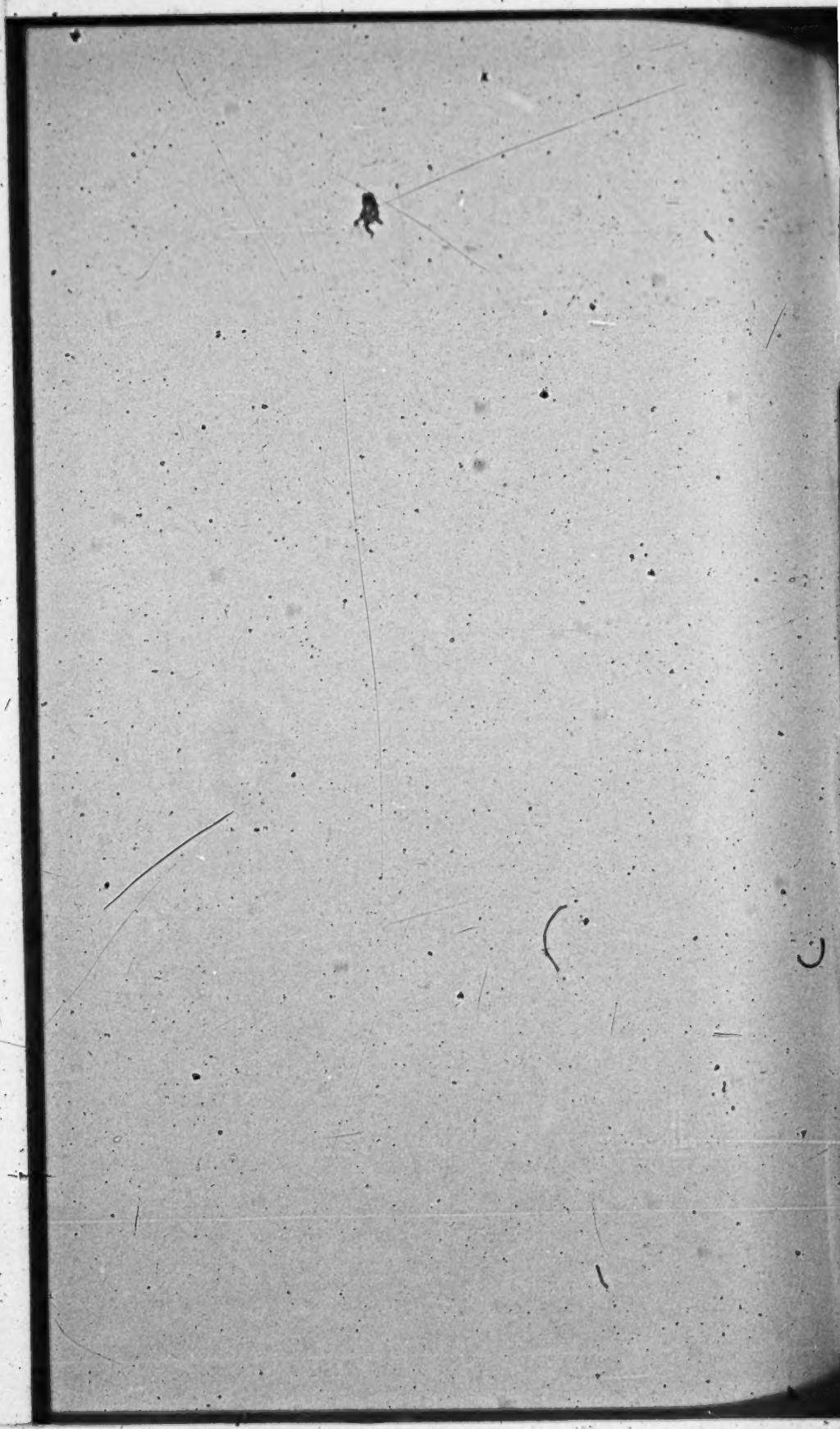

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221	1*	California Railroad Commission.	Railroad Commission Grade Crossing and Terminal Investigation—Los Angeles.
225	5*	City of Los Angeles.	Decision of Interstate Commerce Commission in Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, decided June 6, 1925.
227	4	California Railroad Commission.	Plan for Union Passenger Terminal at Plaza, June, 1924.
227	5	California Railroad Commission.	Map—Railroad and Industrial District, Los Angeles.
227	6	California Railroad Commission..	Key Map of the Commission's Plaza Plan.
228-30	3	Atchison, Topeka and Santa Fe Railway Company.	Estimated cost of Proposed Depot, etc., for Exclusive Use of Santa Fe, Los Angeles.
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235-6	19	California Railroad Commission.	Summary Vehicular Traffic Across Alameda Street.
238-9	22	California Railroad Commission.	Automobile Registration Statistics—Growth in Automobile Registration.
240	23	California Railroad Commission.	Delays to Traffic at Alameda Street Crossings, 1918 and 1923.
242-4	24	California Railroad Commission.	Comparison of Scheduled and Actual Through Passenger Train Movements in and out of Los Angeles.

NOTE—*Indicates an exhibit certified separately and transmitted as an original exhibit.

Page of Transcript of Record	Number of Exhibit	Party Offering Exhibit	Subject Matter of Exhibit
245	25	California Railroad Commission.	Passengers Handled by Steam Railroads in and out of Los Angeles for Typical Week, 1926.
246	26	California Railroad Commission.	Comparison of Passengers Handled by Steam Railroads in and out of Los Angeles for Typical Week in Years 1918, 1923 and 1926.
247	27	California Railroad Commission.	Comparison of Annual Ticket Sales in Los Angeles.
248-9	28	California Railroad Commission.	Statement Showing Normal and Maximum Number of Passengers Handled in and out of Los Angeles for a Period of Sixty Minutes, January, 1926.
250-1	30	California Railroad Commission.	Occupancy of Station Trackage at Central Station.
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254-5	38	California Railroad Commission.	Comparison of Population in Zones Closer by Travel Time to the Respective Station Sites.
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270	13*	City of Los Angeles.	Map—Major Traffic Street Plan, Los Angeles.

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270	15*	City of Los Angeles.	Map—Administrative Center District and Adjoining Areas Showing Certain Land Ownerships.
271	16*	City of Los Angeles.	Map—Metropolitan Mosaic, Greater Los Angeles.
274	36*	Carriers	Proposed Train Movements in and out of Station, Joint Terminal Los Angeles & Salt Lake Railroad and Southern Pacific.
280-5	87	Carriers	Deed—Wolfskill to Southern Pacific Railroad Company.
286	80*	Carriers	Los Angeles Union Passenger Terminal Proposed by California Railroad Commission in Los Angeles.
287	88*	Carriers	Estimate Los Angeles and Salt Lake Railway Company and Southern Pacific Company Joint Passenger Terminal Facilities.
287-91	90	Carriers	Comparison of Estimates of Commission's Plaza Plan as made by Commission's Engineers and by Carriers' Engineers.
293-4	101	Carriers	Statement showing Normal and Maximum Number of Passengers handled in and out of Los Angeles for a Period of Sixty Minutes, January, 1926.
295-6	106	Carriers	Comparative Financial Statement—Carriers' Plan, Plaza Plan.
301-2	56	California Railroad Commission.	Chart—Showing Increase of Population and Trend of Passenger Traffic on all Steam Lines in Los Angeles.

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MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

May It Please the Court:

The undersigned, as counsel for the City of Los Angeles, State of California, respectfully move this

Honorable Court for leave to file the accompanying brief in this case as *amici curiae*.

ERWIN P. WERNER,
MILTON BRYAN,
MAX THELEN,
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EDWIN C. BLANCHARD,
Counsel for City of Los Angeles, as Amici Curiae.

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BRIEF OF AMICI CURIAE IN BEHALF OF CITY OF LOS ANGELES

I. Introduction.

This brief is filed by permission of this Court by amici curiae who are counsel for the City of Los

Angeles, which city is vitally interested in the outcome of this proceeding.

This is an appeal by railway companies from the decision of the Supreme Court of California filed on May 27, 1930, in *The Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California* and two similar cases consolidated therewith in which Los Angeles & Salt Lake Railroad Company, and Southern Pacific Company and Southern Pacific Railroad Company, respectively, were the petitioners (209 Cal. 460, 79 Cal. Dec. 457, R. 184-198).

In said decision, the Supreme Court of California affirmed an order of the Railroad Commission of California, filed on July 8, 1927, in *Municipal League v. Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company* and *San Pedro, Los Angeles & Salt Lake Railroad Company,* and seven other proceedings consolidated therewith. Volume 30, Opinions and Orders of the Railroad Commission of California, p. 151 (R. 119-134).

A.

ORDER OF CALIFORNIA RAILROAD COMMISSION.

The order of the Railroad Commission directed the Southern Pacific Company (hereinafter at times referred to as the Southern Pacific), The Atchison, Topeka & Santa Fe Railway Company (hereinafter at times referred to as the Santa Fe) and the Los Angeles and Salt Lake Railroad Company (hereinafter

at times referred to as the Salt Lake or the Union Pacific) to construct and thereafter operate a union passenger station within a specified area within the City of Los Angeles in the vicinity of the Plaza, together with such tracks and other physical structures as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million ($10,000,000.00) dollars, in substantial compliance with the "Plan for a Union Passenger Terminal at the Plaza" which is marked as Railroad Commission's Exhibit 4B (R. 133). Exhibit 4B is inserted opposite page 266 of the Record herein.

The carriers were directed to start work upon the construction of the union passenger station within ninety (90) days and to complete the same within three (3) years (R. 133).

Upon and after the construction of the union passenger station, the Southern Pacific was directed to discontinue the operation of freight and passenger train service, excepting only industrial freight switching service during hours to be thereafter specified, over that portion of its railroad which lies on and along Alameda Street between College Street and East Fifteenth Street, inclusive, in the City of Los Angeles (R. 133-4).

The order then continued as follows (R. 134):

> "This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing

and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission."

The Railroad Commission's attorney was directed to file with the Interstate Commerce Commission a copy of said order, with a petition that the latter Commission issue such certificates or other appropriate order or orders as might be requisite or proper in order to render said order effective (R. 134).

The Railroad Commission reserved "the right to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require" (R. 134).

Finally, the Railroad Commission dismissed Application No. 3346, which was an application by the Southern Pacific and the Salt Lake for approval of an agreement under which these carriers would have made effective their plan for handling the terminal situation in Los Angeles. This plan was disapproved by the Railroad Commission (R. 134), following its

prior disapproval by the Interstate Commerce Commission in Finance Docket No. 3569 (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 459, 460, Exh. 5 of City of Los Angeles, separately certified and forwarded, R. 7).

Upon petitions separately filed by the Railroad Commission and by the City of Los Angeles, the Interstate Commerce Commission thereupon reaffirmed the findings and issued the certificates specified by this Court in the *First Los Angeles Union Station Case, Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331 (*Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489; R. 135, 138-40, 145, 153-4, 154-6).

Certified copy of said decision of the Interstate Commerce Commission was thereupon formally filed by the Railroad Commission in the proceedings then pending before it, the petitions of the carriers for rehearing were denied and the carriers filed with the Supreme Court of California petitions for the issuance of writs of review, which writs were issued.

B.

DECISION OF SUPREME COURT OF CALIFORNIA.

Thereafter, following the decision of this Court in the *Second Los Angeles Union Station Case, Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, the Supreme Court

of California filed the decision which is the subject of the present appeal (R. 184-198).

The Supreme Court of California held:

1. That, in the light of this Court's decisions in the *First* and the *Second Los Angeles Union Station Cases,* it is clear that the Transportation Act, 1920, did not transfer to the Interstate Commerce Commission the power to make the order here involved (R. 185-192);

2. That the argument of the carriers that Congress had at least "entered the field" to an extent sufficient to terminate the state's authority to deal with the subject is shown to be without merit by this Court's decision in the *First Los Angeles Union Station Case* "to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission" (R. 192);

3. That under the Constitution and the Public Utilities Act of California there can be no question that the Railroad Commission possesses powers sufficiently broad to include the ones sought to be exercised by the Commission (R. 192-3);

4. That there is no merit in the contention of the carriers that the Railroad Commission's order violates "the law of the case" (R. 193-4);

5. That the Railroad Commission's order does not violate any rights of the carriers under the

Fourteenth Amendment to the Federal Constitution, as appears from an analysis of the facts of the present case and the principles uniformly established in many union passenger station cases (R. 195);

6. That the argument of the Southern Pacific based on the necessity, under the order, of abandoning the present Arcade Depot is without merit, that the record shows the operation of the Southern Pacific's passenger trains along Alameda Street to and from the Arcade Depot to be "so unsafe, impracticable and unreasonable * * * as to require elimination," that this conclusion has been conceded by the Southern Pacific, which submitted a plan of its own, and that the findings of the Railroad Commission upon the subject were made "after full consideration and upon ample evidence" (R. 196);

7. That the contention of the Santa Fe and the Salt Lake that they were being required to join in the construction of a union passenger station by reason of the Southern Pacific's necessity for a change, is unsound for the reason that "each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities" and that "each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan" (R. 196-7);

8. That an examination of the record shows that "there is nothing unreasonable or arbitrary in the findings and order made" (R. 197);

9. That the order is not void for uncertainty (R. 197-8);

10. That the contention of the carriers that the certificates issued by the Interstate Commerce Commission are not proper and sufficient certificates "is not properly raised here," that "the certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States" and that both the Interstate Commerce Commission and the Railroad Commission so considered them (R. 198); and

11. That the details of construction of the union passenger station are sufficiently specified (R. 198).

II. Statement of the Case.

A.

PHYSICAL FACTS.

The physical facts with reference to the location of the existing lines of railroad of the Southern Pacific, the Santa Fe and the Salt Lake in the City of Los Angeles, the existing passenger depot facilities, and the area in the Plaza district in the City of Los Angeles specified in the Railroad Commission's order as the location for the proposed union passenger station

and the other physical facts bearing on the present issue are set forth in the following decisions of the Interstate Commerce Commission and of the Railroad Commission:

1. *Los Angeles Passenger Terminal Cases* (First Decision), 100 I. C. C. 421; Exh. 5 of City of Los Angeles, separately certified and forwarded (R. 7);
2. *Los Angeles Passenger Terminal Cases* (Second Decision), 142 I. C. C. 489 (R. 135-156);
3. *Municipal League v. Southern Pacific Company, et al.,* and consolidated cases (First Case), Volume 20, Opinions and Orders of Railroad Commission of California, p. 937 (R. 84-96); and
4. *Municipal League v. Southern Pacific Company, et al.,* and consolidated cases (Second Case), Volume 30, Opinions and Orders of Railroad Commission of California, p. 151 (R. 119-134).

The tracks, existing passenger station facilities and area for the proposed union passenger station are shown on the map which is Railroad Commission's Exh. 5, entitled "Railroad and Industrial District—Los Angeles," which appears opposite page 226 of the Record herein.

The plan for the proposed union passenger terminal at the Plaza in Los Angeles is shown on the "Plan for a Union Passenger Terminal at the Plaza" which

is marked C. R. C. Exhibit 4B and appears opposite page 266 of the Record herein.

Under the head of "Physical Facts," we shall refer herein, very briefly, only to "Existing Passenger Depots" and to "Alameda Street Situation."

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1. EXISTING PASSENGER DEPOTS.

a. Salt Lake Passenger Depot.

The Salt Lake (part of the Union Pacific system) does not now own any passenger depot in the City of Los Angeles.

This carrier formerly owned and operated a passenger station on the east bank of the Los Angeles River, north of First Street. The passenger station building at said location was a two-story frame building which was erected in 1891 at a cost of approximately $10,000.00. This structure was inadequate to serve the needs of the traveling public and its location was inconvenient and its access dangerous to the public (*Los Angeles Passenger Terminal Cases* (First Decision) 100 I. C. C. 421, 432, 454; *Municipal League v. Southern Pacific et al.* (First Case), Volume 20, Opinions and Orders of Railroad Commission of California, pp. 937, 942, R. 84, 88; Exh. 1 of California Railroad Commission (Sachse Report), pp. 244-5, separately certified and forwarded, R. 7).

In 1924, a fire did some damage to the second story of the building, whereupon the Salt Lake was author-

ized by the Railroad Commission to run its passenger trains into the Arcade depot of the Southern Pacific as a temporary matter. In its order, the Railroad Commission expressly provided that the Salt Lake and the Southern Pacific should not use the granting of the application either by way of defense or argument on the ground of capital expenditures or on any other ground against any order, or in any proceeding then or thereafter pending before said Commission or any other Commission, court or public tribunal providing for or looking toward railroad or terminal unification in the City of Los Angeles (*Application of Southern Pacific Company and Los Angeles and Salt Lake Railroad Company,* Volume 25, Opinions and Orders of Railroad Commission of California, pp. 281, 285).

The Salt Lake thereupon accepted said order of the Railroad Commission, began its operations into the Arcade Depot on or about November 1, 1924, and has continuously subsequent thereto operated its passenger trains into and out of the Arcade Depot. In order to reach the Arcade Depot, the Salt Lake operates all its passenger trains at grade on and along Alameda Street from Butte Street on the south to the Arcade Depot on the north, across many important public streets. Thereby the inconvenience and danger to traffic, both vehicular and pedestrian, across this portion of Alameda Street has been greatly accentuated (Mott, R. 242; *Municipal League v. Southern Pacific Company et al.* (Second Case), Volume 30, Opinions and

Orders of Railroad Commission of California, pp. 151, 157-8; R. 119, 128).

b. Santa Fe Depot.

The Santa Fe's passenger station in the City of Los Angeles is located along the west bank of the Los Angeles River, south of First Street, in a small brick building which was erected in 1893. The structure is inadequate and does not meet the reasonable requirements of the traveling public (*Los Angeles Passenger Terminal Cases,* (First Decision), 100 I. C. C. 421, 432, 454; *Municipal League v. Southern Pacific Company, et al.* (First Case), Volume 20, Opinions and Orders of Railroad Commission of California, pp. 937, 944, R. 84, 88; Exh. 1 of California Railroad Commission (Sachse Report), pp. 90, 242-3, separately certified and forwarded, R. 7; Sachse, R. 260).

Substantially all members of the public who have occasion to use the Santa Fe's passenger depot can do so only by crossing Alameda Street and the main tracks of the Southern Pacific located thereon. The Santa Fe's present passenger depot is located on a site which is inconvenient and difficult of access and dangerous to the public desiring to use the passenger depot (Exh. 5 of California Railroad Commission, opposite p. 226 of Record).

The Santa Fe concedes the inadequacy of the present structure and has plans for rebuilding the same at a cost of $1,182,317.00 (Ball, R. 228; Exh. 3 of Santa Fe, R. 229-30).

c. Southern Pacific Depot.

The Southern Pacific's Arcade passenger depot in the City of Los Angeles was constructed in 1914 at a cost of $462,043.00 (Jaekle, R. 297).

The depot was built under authority of an order of the Railroad Commission made on petition of the carrier. As the result of public protests on the ground that the elimination of the Southern Pacific's railroad grade crossings on Alameda Street would be delayed or prevented by the construction of a passenger station at said point, the Railroad Commission's order authorizing the demolition of the old Arcade passenger depot at this point and the erection of the present depot contained an express provision

> "that the tearing down and abandonment of said old depot, and the erection of said new depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California." (*Application of Southern Pacific Company,* Volume 3, Opinions and Orders of Railroad Commission of California; pp. 927, 930; Exh. 1 of California Railroad Commission (Sachse Report) pp. 90, 233-5, separately certified and forwarded, R. 7).

The public interest and public safety urgently require the elimination from Alameda Street of all passenger operations. This is conceded by all parties,

including the Southern Pacific. This will require either getting into the Arcade site by means of an overhead viaduct one mile long from across the Los Angeles River (the plan proposed by the Southern Pacific and found by both the Interstate Commerce Commission and the California Commission to be against the public interest) or the removal of the Southern Pacific passenger depot to a location north of Alameda Street in conjunction with the other steam carriers, whereupon it will become unnecessary for the passenger trains to run along Alameda Street and that problem will thereupon be automatically solved (the plan approved by both the Federal and the State Commissions).

The carriers rely on the Railroad Commission's said order of 1913 and on comments made by the Commission's engineers in 1919 to show that the Arcade station building is at this time adequate, but the enormous increase in the population and passenger traffic of Los Angeles since those years has been such that the building is rapidly becoming inadequate. An inspection any day of the year during peak hours shows that the building has actually reached its capacity or will do so shortly (Sachse, R. 260). There is a very definite tendency now toward overcrowding the waiting room between the hours of 7 and 8 P. M. prior to the departure of such important trains as the Padre, Lark and Sunset Limited (Mott, R. 253).

2. ALAMEDA STREET SITUATION.

Alameda Street is the principal north and south street through the industrial section of Los Angeles.

The passenger trains of the Southern Pacific, in traveling along Alameda Street to and from the Arcade Depot, cross at grade every important east and west street in the City of Los Angeles from College Street on the north to East Fifteenth Street on the south, a distance of three miles. This is a *double* track and is the 6.6 miles of main line of railroad referred to on page 29 of the Joint Brief for Appellants.

Mr. F. L. Burckhalter, the First Assistant General Manager of the Southern Pacific Company, testified that there are 43 steam line railroad grade crossings on Alameda Street over which there are 4000 train movements daily. Daily, the tracks of the Southern Pacific on and along Alameda Street are crossed by 125,000 vehicles and 4,000 street cars, containing approximately 330,000 people (R. 299-300).

(NOTE: This would be 120,450,000 people yearly.)

The Southern Pacific has conceded, again and again, that the Alameda Street situation must be remedied.

The Interstate Commerce Commission found that the existing situation on and along Alameda Street is agreed by all parties to be

> "a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west

urban traffic." (*Los Angeles Passenger Terminal Cases* (First Decision), 100 I. C. C. 421, 430; Exh. 5 of City of Los Angeles, separately certified and forwarded, R. 7.)

Subsequently, the Railroad Commission found that the conditions at the Alameda Street crossings "are admittedly becoming worse day by day" and that the situation has become "aggravated by the interjection of certain Salt Lake trains using a portion of that street as a means of temporary access to the Arcade Station." (*Municipal League v. Southern Pacific Company, et al.*, Volume 30, Opinions and Orders of Railroad Commission of California, pp. 151, 157-8; R. 119, 128).

The passenger business not merely of the Southern Pacific but also of the Santa Fe and the Salt Lake is affected by this Alameda Street situation.

All persons coming to or going from the Santa Fe depot from or to points west of Alameda Street must cross the Southern Pacific tracks located and operated thereon. The Santa Fe has its passenger depot so located that its passengers are obliged to go through said scene of danger in order to reach it (Exh. 5 of California Railroad Commission, R. opposite p. 226).

The same situation would be equally applicable to the Salt Lake if that carrier should return to its passenger grounds on the east bank of the Los Angeles River. At the present time, by running its passenger trains into and out of the Southern Pa-

cific's Arcade Station, along Alameda Street south of the Arcade Station, the Salt Lake has aggravated and is aggravating the situation along that part of Alameda Street.

B.

HISTORICAL FACTS.

The historical facts may be very briefly summarized as follows:

1. CALIFORNIA RAILROAD COMMISSION'S FIRST DECISION.

On December 6, 1921, after an exhaustive investigation and voluminous testimony since 1916, the Railroad Commission of California rendered a decision ordering the Southern Pacific, the Santa Fe and the Salt Lake to procure sufficient land within a specified area in the Plaza district in Los Angeles for a union passenger station, to prepare and submit plans for such union station, passenger terminal and necessary facilities, and upon approval of the plans by the Commission, to proceed with the construction of such station and terminal (Volume 20, Opinions and Orders of Railroad Commission of California, p. 937; R. 84-96).

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2. CALIFORNIA SUPREME COURT'S FIRST DECISION.

The carriers thereupon took the Railroad Commission's decision and order to the Supreme Court of California by writs of review. In *The Atchison, To-*

peka and Santa Fe Railway Company v. Railroad Commission of California, 190 Cal. 214, the Supreme Court of California, on December 19, 1922, annulled the Railroad Commission's order on the ground that jurisdiction over the union passenger terminal situation in Los Angeles had, by the Transportation Act of 1920, become vested solely and exclusively in the Interstate Commerce Commission.

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3. COMPLAINT OF CITY OF LOS ANGELES BEFORE INTERSTATE COMMERCE COMMISSION.

The City of Los Angeles, thereupon, in March, 1923, filed with the Interstate Commerce Commission its formal complaint in Docket No. 14,778, asking the Interstate Commerce Commission to make its order directing said carriers, among other matters, to construct and thereafter operate and use a union passenger depot and appurtenances on the site in the Plaza district in Los Angeles theretofore specified by the Railroad Commission of California. The Commission was also asked to make appropriate findings and issue appropriate certificates necessary and incidental to the construction and operation of said union passenger depot.

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4. UNITED STATES SUPREME COURT'S FIRST DECISION.

Thereafter, on April 7, 1924, this Court made its decision in *Railroad Commission of California v.*

Southern Pacific Company, 264 U. S. 331, being a petition by the Railroad Commission of California for a review of said adverse decision of the Supreme Court of California (190 Cal. 214). This Court affirmed the judgment of the Supreme Court of California and held that it would be necessary for the Interstate Commerce Commission to make certain findings and issue certain certificates "as a condition precedent to the validity of any action by the carriers or *of any order by the State Commission*" (p. 346). (Emphasis supplied). This Court expressed its conclusion as follows (p. 348):

> "Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto *as ordered by the State Railroad Commission.*" (Emphasis supplied.)

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5. INTERSTATE COMMERCE COMMISSION'S FIRST DECISION.

Thereafter, after taking further evidence in said Docket No. 14,778, the Interstate Commerce Commission, on July 6, 1925, rendered its first decision in said docket (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421). The Commission made the findings of fact which had been requested by the City of Los Angeles but held that it did not have jurisdiction to make the final order requested by the City requiring the construction of a union passenger depot.

The Commission held that under the existing circumstances it would issue no certificates or further orders at the time, but would retain jurisdiction of said Docket No. 14,778, pending further possible action by the Railroad Commission of California.

(NOTE: For the 6 findings of fact made by the Interstate Commerce Commission in this first decision, see the Note at the end of this section of this brief and Appendix No. 2.)

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6. CALIFORNIA RAILROAD COMMISSION'S SECOND DECISION.

The Railroad Commission of California thereupon reopened the matters pending before it for further consideration and after receiving voluminous additional testimony rendered a further decision on July 8, 1927 (Volume 30, Opinions and Orders of Railroad Commission of California, p. 151; R. 119-134). The Railroad Commission made findings of fact substantially identical with the 6 findings of fact theretofore made by the Interstate Commerce Commission and added 4 further findings.

This is the decision now at issue herein. Sufficient reference has hereinbefore been made to the Commission's order.

(NOTE: For the 4 additional findings of fact made by the California Railroad Commission in this decision, see the Note at the end of this section of this brief and Appendix No. 2. The Interstate Commerce Commission, in its subsequent decision, found that these additional findings of fact of the California Railroad Commission "find sufficient support in the record" (142 I. C. C. 489, 496, R. 135, 145).)

7. INTERSTATE COMMERCE COMMISSION'S SECOND DECISION.

The City of Los Angeles thereupon filed with the Interstate Commerce Commission in said formal complaint Docket No. 14,778 its petition advising the Commission, among other matters, of the most recent action taken by the Railroad Commission of California and asking the Interstate Commerce Commission now to issue its *certificates* in accordance with its findings in its said decision of July 6, 1925 (100 I. C. C. 421), and also to make its *order requiring* the Southern Pacific, the Santa Fe and the Salt Lake to construct and thereafter maintain a union passenger station and appurtenances within that portion of the Plaza district in the City of Los Angeles which had been specified by the California Railroad Commission and to acquire such land, if any, as might be necessary for said purpose, at a total cost of approximately $10,000,000.00 in substantial compliance with the plan identified as California Railroad Commission's Exhibit No. 4B.

The Railroad Commission also filed a petition praying for the issue of such certificates as might be requisite or proper to make its order of July 8, 1927, effective.

After further briefs and oral argument, the Interstate Commerce Commission, on May 8, 1928, rendered its second decision in said Docket No. 14,778 (142 I. C. C. 489; R. 135-153). The Commission adhered to the findings of fact made by it in its said first decision, declared that the additional findings of the California Railroad Commission numbered 7 to 10,

inclusive, hereinbefore referred to; found sufficient support in the record and issued its *certificates* as requested by the City of Los Angeles and the California Railroad Commission. In its majority opinion, however, the Commission again refused to take the final step of *ordering* the carriers to construct and operate a union passenger depot as prayed for by the City of Los Angeles and to consider the evidence bearing on the propriety of making said order. The Commission again based its refusal to make such order or consider the evidence bearing thereon on its view that, as a matter of law, it does not have the jurisdiction to make such order.

(NOTE: For the *certificates* issued by the Interstate Commerce Commission in this decision, see the Note at the end of this section of this brief and Appendix No. 3.)

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8. DECISIONS OF SUPREME COURT AND COURT OF APPEALS OF DISTRICT OF COLUMBIA.

Thereafter, the City of Los Angeles filed in the Supreme Court of the District of Columbia its petition for a writ of mandamus compelling the Interstate Commerce Commission to consider the evidence in the *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421 and 142 I. C. C. 489, for the purpose of determining whether the Commission should *order* the carriers to build a union passenger station in the City of Los Angeles and, after consideration of the evidence, to make such order therein as the facts and the merits might justify or require.

The Supreme Court of the District dismissed the petition.

The Court of Appeals reversed the judgment and remanded the case for further proceedings (*United States ex rel. City of Los Angeles v. Interstate Commerce Commission,* 34 Fed. (2d) 228).

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9. UNITED STATES SUPREME COURT'S SECOND DECISION.

This Court thereupon granted a writ of certiorari and thereafter, on November 25, 1929, made its decision reversing the Court of Appeals, on the ground that Congress has not conferred upon the Interstate Commerce Commission authority to require the construction of union passenger depots on sites not already devoted to passenger station service (*Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52).

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10. CALIFORNIA SUPREME COURT'S SECOND DECISION.

Thereupon, the Supreme Court of California, which had deferred decision in the case pending before it until this Court should have rendered its decision in the mandamus proceeding, authorized the filing of supplemental briefs and on May 27, 1930, made and filed the decision now on appeal before this Court.

(NOTE: Findings of Fact and Certificates:

The 6 *findings of fact* made by the Interstate Commerce Commission in its first decision and later reaf-

firmed in its second decision may be found in 100 I. C. C. 421, 459-60 and also in the margin in 142 I. C. C. 489, 491-2. See also R. 135, 138-40.

The 4 additional *findings of fact* which were made by the Railroad Commission of California and as to which the Interstate Commerce Commission, in its second decision, said that "they find sufficient support in the record," may be found in Volume 30, Opinions and Orders of Railroad Commission of California, pages 151, 161. See also R. 119, 131-3.

The *certificates* issued by the Interstate Commerce Commission in its second decision of May 8, 1928, in accordance with the decision of this Court in *Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331, may be found in R. 153-4.

The Court is further referred to the following Appendices to this brief:

Appendix No. 2—Findings of Fact of California Railroad Commission and Interstate Commerce Commission.

Appendix No. 3—Certificates issued by Interstate Commerce Commission.)

C.

TRAFFIC FACTS.

1. VOLUME AND DIRECTION OF PASSENGER TRAFFIC.

The Southern Pacific, Santa Fe and Salt Lake transport into and out of the City of Los Angeles annually in excess of 2,245,000 passengers (Exh. 26 of California Railroad Commission, R. 246).

In transporting these passengers, the carriers operate into and out of the city annually in excess of

12,000 arriving and an equivalent number of departing passenger trains (Exh. 24 of California Railroad Commission, R. 243-4).

The Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under the North Broadway Viaduct at the entrance to the city from the north, the two former lines being located under the viaduct along the west bank of the river and the latter line not a stone's throw away along the east bank. The point at which these tracks run under the North Broadway Viaduct is located only approximately three-fourths of a mile distant northerly from the so-called Plaza area as described in the decisions of the California Railroad Commission and the Interstate Commerce Commission (Exh. 5 of California Railroad Commission, opposite R. 226).

The predominating passenger traffic of the carriers in Los Angeles is to and from the north and east. Sixty-nine (69) per cent of all scheduled main line passenger trains enter Los Angeles by routes north of the Plaza area. Forty-two (42) out of the seventy-eight (78) main line scheduled passenger trains daily pass under the North Broadway Viaduct and twelve (12) run along Alhambra Avenue. Only twenty-four (24) trains, being less than one-third (1-3), enter Los Angeles from the south. Seventy-four (74) per cent, being nearly three-fourths, of all passengers, use routes north of the Plaza area (Hill, R. 232).

2. VOLUME OF UNION DEPOT TRAFFIC.

The carriers have at times urged that the number of passengers transferring between the passenger stations of the steam carriers in Los Angeles is a small number—less than 2 per cent—and that this number does not justify the erection of a union passenger station.

This contention has not been repeated in their brief herein. For that reason, we deem it sufficient merely to refer to the Interstate Commerce Commission's comment that the carriers' figures do not include (a) persons stopping over in Los Angeles or (b) persons transferring at Los Angeles but traveling on separate tickets to and from that point, or (c) persons transferring to and from the Pacific Electric. The Commission referred with approval to the estimates of the California Commission's engineers that "probably 10 per cent of the passengers carried by the steam lines normally transfer from one road to another" and pointed out that this figure "does not include passengers transferring to or from the Pacific Electric" (*Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421, 441-2).

The record in this proceeding sustains the Interstate Commerce Commission's findings (Exh. 1 of California Railroad Commission, (Sachse Report) 248, 258, separately certified and forwarded, R. 7); Sachse, R. 262; Jaekle, R. 298).

D.

FINANCIAL FACTS.

1. GROSS AND NET COSTS OF PROPOSED UNION PASSENGER STATION.

The California Railroad Commission found that the *gross* cost of compliance by the carriers with its order would be $10,000,000. Such compliance would release from railroad passenger uses valuable lands belonging to the Southern Pacific and the Santa Fe, which lands could then be sold for at least $4,500,000, thus resulting in a *net* cost of $5,500,000 for the project (*Municipal League v. Southern Pacific, et al.*, Volume 30, Opinions and Orders of Railroad Commission of California, pp. 151, 159; R. 119, 130).

These findings are supported by voluminous and overwhelming evidence.

The Interstate Commerce Commission found that the total investment of the carriers in passenger facilities under the Plaza plan would be approximately $9,500,000 and that this sum would be reduced by the market value of salvaged lands to approximately $5,500,000. The Commission found that the total investment under the plan proposed by the Southern Pacific and the Salt Lake would have been $11,000,000 (*Los Angeles Passenger Terminal Cases* (First Decision), 100 I. C. C. 421, 456-7).

The investment under the Plaza plan would be very moderate for a city of the size of Los Angeles, "much

less than for similar facilities in any city of the same size" (Sachse, R. 266).

The carriers have not, in their brief herein, questioned the accuracy of the findings as to the cost of the project, either gross or net, nor have they urged that the amount is unreasonable, nor have they urged that the *amount* of the cost, either gross or net, is such as to deprive them of any right claimed by them.

Hence, we shall not pursue this subject further.

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2. INTERSTATE COMMERCE COMMISSION'S FINDING AS TO FINANCIAL ABILITY OF CARRIERS.

In the *First Los Angeles Union Station Case, Railroad Commission of California vs. Southern Pacific Company,* 264 U. S. 331, the Court said (p. 347):

> "We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the Act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public."

The Interstate Commerce Commission thereupon made such finding based on evidence submitted to it (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 453-4, 460) and subsequently reaffirmed it (*Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489, 496; R. 135, 139, 145).

We do not understand that the accuracy of this finding has ever been challenged and, for that reason, shall not develop the subject further.

E.

CARRIERS' STATEMENT OF THE CASE.

We shall now refer very briefly to a number of matters in the "Statement of the Case" appearing in the "Joint Brief for Appellants" on file herein (pp. 4-15), which matters we believe call for comment.

At page 4, the carriers say that at the commencement of the proceedings which culminated in the order under review, the carriers had separate passenger stations in the City of Los Angeles "none of which is in the vicinity of the others." We believe that a glance at the map which is Exh. 5 of the California Railroad Commission, reproduced opposite page 226 of the Record, will show the inaccuracy of this statement. As appears from this map, the old Salt Lake passenger depot was located directly across the river from the Santa Fe depot, less than ¼ mile away, while the Santa Fe depot is located only between ½ mile and ¾ mile from the Southern Pacific's depot. As will be further noted from said map, these locations, as well as the Plaza site, are all within the general "Railroad and Industrial District" of Los Angeles.

At page 6, the reference to the proceedings instituted before the Railroad Commission should be

amplified by stating that request was also made for the construction of a union passenger station (see complaint of Central Development Association, as amended, R. 19-21).

At page 8, the reference to the first decision rendered by the Interstate Commerce Commission in the *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, is inaccurate. The Commission issued no *certificates* in that decision. It made 6 *findings* but deferred the issue of *certificates* to await such further action, if any, as the California Railroad Commission might take (pp. 459-461). In its second decision, the Commission, after re-affirming its *findings,* went a step further and issued the *certificates* which this Court had specified in the *First Los Angeles Union Station Case, Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331, 344, 348. The certificates appear on pages 153-4 of the Record herein and in appendix No. 3 to this brief.

At page 11, appears a reference to a joint use of lands and other properties valued at $28,050,691 and to an ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000. Merely to avoid possible confusion, we desire to point out that these figures relate to a so-called "ultimate plan" worked out by engineers of the California Railroad Commission, covering a large number of various projects in Los Angeles County, of which the union passenger station project then recommended by the engineers, was to cost less than one-third of the total

(Exh. 1 of California Railroad Commission, p. 15, separately certified and forwarded, R. 7). The plan was never adopted by the California Railroad Commission. As already pointed out, the construction ordered by the California Commission, will cost *gross* $10,000,000 and *net* not to exceed $5,500,000.

At page 11, the carriers also say that with the exception of the reduced estimated cost and the requirement of the elimination of grade crossings over the Salt Lake and Santa Fe tracks on the river banks, "the State Commission's order under review is practically identical with its original orders." As already pointed out, the Railroad Commission never made an order calling for the expenditure of $28,050,691 or any sum in excess of $10,000,000 gross. Furthermore, the California Railroad Commission's order now here on appeal differs from the first order, among other matters, in the vital respect that it is expressly declared that it is to become effective only "from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed * * *" (R. 134). Again, this order refers to a definite plan shown on Exhibit 4B and specifies a definite gross cost of $10,000,000, whereas the first order did neither. There are other significant differences, but we consider it unnecessary to pursue the subject further.

At page 12, the carriers say that the California Commission's order "involves the acquisition of new land, about forty acres, a portion of which is owned by some of the railroads * * *." The facts are that the land included within the Plaza area shown on Exh. 4B of the Railroad Commission amounts to 37 acres and that the carriers, at the time the evidence herein was submitted, already owned 26.87 acres within this area. In other words, the carriers already owned more than 70 per cent of the total area (Exh. 49 of California Railroad Commission, separately certified and forwarded, R. 8). Reference to said map and a comparison with Exh. 4B will show that with slight exceptions the land necessary for the entire physical structures in connection with the union station plan is already owned by the carriers and that the remaining property necessary to be acquired is a minor quantity of land adjacent to the lands already owned and necessary merely to "round out" the site.

At page 13, the carriers state that the petition which the City of Los Angeles filed with the Interstate Commerce Commission in said Docket No. 14,778, following the California Railroad Commission's second decision, asked merely for an order requiring the construction of a union passenger station. As a matter of fact, the City of Los Angeles asked also for the issuance of certificates in accordance with the findings in 100 I. C. C. 459-460 and for such additional findings, certificates and orders as might be just and equitable and in the public interest (*Los Angeles*

Passenger Terminal Cases, 142 I. C. C. 489, 494; R. 135, 142).

At page 15, the carriers erroneously state what the Supreme Court of California held. The Supreme Court did not hold that the State Commission's order did not violate the constitutional rights of the carriers "in requiring them to abandon adequate facilities." As a matter of fact, the record before the State Commission, as hereinbefore pointed out, showed that the existing facilities of the carriers are not adequate or proper. The Supreme Court did not hold that the carriers could be required to extend their main lines of railroad "to reach new territory not theretofore served by them." The Commission's order does not provide for any extension into *new territory* not theretofore served by them. Finally, the Supreme Court did not hold that the Railroad Commission's order required any railroad to permit another railroad to use its main line tracks or facilities without compensation. The Railroad Commission's order contained no such requirement and the Supreme Court said nothing to the contrary.

III. Summary of Argument.

A. California Railroad Commission had Jurisdiction to make the order.

1. Prior to Transportation Act, 1920, California Railroad Commission clearly had the jurisdiction.

2. In enacting the Transportation Act, 1920, Congress did not intend to deprive and did not deprive the states of jurisdiction to require the construction and operation of union passenger stations and the necessary incidents, on new sites.

   a. General rule.

   b. Intention of Congress as to union passenger stations.

3. The Railroad Commission's order does not contravene the Commerce Clause of the Federal Constitution or any provision of the Interstate Commerce Act.

   a. Analysis of the Railroad Commission's order.

   b. The California Railroad Commission has not invaded a field occupied by Congress.

      (1) Union station.

      (2) Essential incidents of a union station.

   c. This is not a case of one commission giving effect to the orders of another commission or of divided authority in the same jurisdiction.

B. Interstate Commerce Commission's Certificates Are Valid.

1. The certificates described.

2. The certificates are valid.

3. The validity of the certificates can not be attacked collaterally.

C. California Railroad Commission's Order is Just and Reasonable and Does Not Deprive any Carrier of Any Right Under the Fourteenth Amendment to the Federal Constitution.

1. Under the police power, public authority may require the construction and operation of union passenger stations whenever the power has been conferred and, on the facts, such order would be reasonable.
   a. Union passenger station decisions of state courts.
   b. Decisions of Supreme Court of United States.
2. The authorities on which the carriers rely are not in point.
3. The carriers are in error in urging that the Railroad Commission's order requires the joint use of any of their property without compensation first paid.
4. There is no foundation for the contention of the carriers that the Railroad Commission acted under the guise of exercising power over railroad grade crossings.
5. The contentions of the carriers (a) that the Southern Pacific is being directed to take action for the purpose of providing the Santa Fe and the Salt Lake with adequate passenger depots and (b) that the Santa Fe and the Salt Lake are being directed to take action for the purpose of eliminating the Southern Pa-

cific's grade crossings on Alameda Street are contrary to the facts and without any merit.

a. Santa Fe.

b. Salt Lake.

c. Southern Pacific.

d. Sharing of cost.

IV. Argument.

A.

CALIFORNIA RAILROAD COMMISSION HAD JURISDICTION TO MAKE THE ORDER.

1. PRIOR TO TRANSPORTATION ACT, 1920, CALIFORNIA RAILROAD COMMISSION CLEARLY HAD THE JURISDICTION.

Prior to the enactment of the Transportation Act, 1920, the Railroad Commission of California had full power and authority to make an order for the construction, maintenance and operation by the Southern Pacific, the Santa Fe and the Salt Lake of a union passenger station in the Plaza Area in Los Angeles.

Constitution of California, Article XII, Section 22;

Constitution of California, Article XII, Section 23;

Public Utilities Act of California (Stats. 1915, p. 115), Section 13(b), Section 22(a), Section 30, Section 31, Section 36 and Section 41.

These constitutional and statutory provisions are set forth in the Appendix to the Joint Brief for Appellants on file herein. We shall not extend this brief by repeating these citations, but by reason of its importance in these proceedings we are reprinting Section 36 of the Public Utilities Act in Appendix No. 4.

As the Court will note from a study of said Section 36, the section covers the case of joint construction by two or more public utilities. It gives the Railroad Commission specific authority to fix the *site* of any *new* structure. It sets up the necessary machinery for determining the portion of the cost of the new structure to be borne by each of the participating public utilities. In this respect, the statute completely meets the test prescribed by this Court in its decision in the *Second Los Angeles Union Station Case, Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, 69, in the matter of the establishment of "tribunals to apportion the expenditures and cost as between the carriers."

It seems quite clear from the language of the section that it was drafted to cover the precise situation of union passenger stations to be erected on possible new sites by joint action of several railroads.

Prior to 1920, the carriers who are the appellants herein uniformly took the position that the California Railroad Commission had ample authority, under Section 36 of the Public Utilities Act and related stat-

utes, to compel the construction and operation of union passenger stations.

Mr. Durbrow, attorney for the Southern Pacific Company, said (R. 218-19):

> "I shall contend that, so far as the establishment of a union depot is concerned, that this Commission has been vested with the sole and exclusive power to determine that question under the provisions of section 36 of the Public Utilities Act, and if there is any power in any tribunal in the State of California, court, commission or municipal council, that power must be vested in this Commission under the laws as they now exist."

At R. 219:

> "Commissioner THELEN: You say that *if* there is power in any tribunal, it is in the Railroad Commission. Are you prepared to say whether, in your opinion, that power has been vested in the Railroad Commission?
>
> "Mr. DURBROW: To be frank, in my judgment, by the provisions of section 36 that power has been vested in the Commission."

At R. 219:

> "Mr. DURBROW: My conception of the law is that that power (to compel construction of union passenger depots) has been conferred upon commissions, not only of this state but of other states, and that it is held to be a delegation by the legislature of the police power of the state."

Continuing:

> "Mr. DURBROW: I want to say now, I didn't say it, I tried to, that I believe that where a legislature of a state delegates the power to a commission to compel the establishment of a union depot, that the commission may exercise that power subject, of course, always to constitutional safeguards, and *it is presumed that the Commission will exercise its power in conformity with those.*" (Emphasis supplied.)

The representatives of the other carriers concurred in the views of Mr. Durbrow (R. 219).

If there was ever a doubt in the matter, it was conclusively set at rest by the Supreme Court of California in the decision now before this Court. In *Atchison, Topeka & Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 463, R. 184, 192-3, the Court thus passed upon the force and effect of the appropriate provisions of the Constitution of California and of the Public Utilities Act of that state:

> "The Constitution of this state expressly provides that the authority of the legislature to confer powers upon the Railroad Commission is plenary and unlimited by any provision of the Constitution (Constitution of Calif., Art. XII, Secs. 22 and 23; *Pacific Tel. and Tel. Co. v. Eshleman, et al.,* 166 Cal. 640.)
>
> "*There can be no question that the legislature* by the Public Utilities Act (Stats. 1915, chap.

91, p. 115), secs. 13b, 22a, 30, 31 and, particularly, by section 36 thereof, *has conferred upon the Railroad Commission powers broad enough to include the ones sought to be exercised by said Commission herein.*" (Emphasis supplied.)

Hence, at least up to the enactment of the Transportation Act, 1920, the California Railroad Commission had ample jurisdiction to make an order requiring the railroad companies who are the appellants herein to construct and operate a union passenger station in Los Angeles.

It follows that on the question of the California Railroad Commission's jurisdiction the only remaining question is whether there is anything in the Transportation Act, 1920, which deprives the Railroad Commission of its jurisdiction, bearing in mind the fact that the Interstate Commerce Commission has already made all necessary findings and issued all necessary certificates.

This is a question of the *purpose* and *intention* of Congress when it enacted the Transportation Act, 1920.

2. IN ENACTING THE TRANSPORTATION ACT, 1920, CONGRESS DID NOT INTEND TO DEPRIVE AND DID NOT DEPRIVE THE STATES OF JURISDICTION TO REQUIRE THE CONSTRUCTION AND OPERATION OF UNION PASSENGER STATIONS AND THE NECESSARY INCIDENTS, ON NEW SITES.

a. General rule.

The general rule on the subject was correctly stated by counsel for the Interstate Commerce Commission in his brief filed with this Court in *Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, as follows:

> "It is well settled that, while the federal authority under the commerce clause is paramount even though *trenching* upon the reserved power of a State, yet *where Congress' occupation of a field is only partial a State is left free to act as to matters not covered by or repugnant to the Federal legislation. Savage v. Jones,* 225 U. S. 501, 533, and cases therein cited. *Sligh v. Kirkwood,* 237 U. S. 52; *M. K. & T. Ry. v. Harris,* 234 U. S. 412; *Missouri Pac. Ry. v. Larrabee Flour Mills Co.,* 211 U. S. 612. It is also settled that *federal legislation* so *trenching* upon the power of a state *will be strictly construed,* that is, that it will be taken to supersede State authority only to the extent necessary to avoid defeating express provisions of the Acts of Congress, *M. K. & T. Ry. v. Haber,* 169 U. S. 613, 623; *Savage v. Jones, supra,* 533; *Ill. Cent. R. R. Co. v. Pub. Utilities Comm.,* 245 U. S. 493, 510; *Lehigh Valley R. Co. v. Pub. Utility Comm.,* 278 U. S. 24, 35." (Emphasis supplied.)

In the leading case of *Savage v. Jones,* 225 U. S. 501, 533, the present Chief Justice stated the general rule as follows:

> "Is, then, a denial to the state of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & P. R. Co. v. Abilene Cotton Oil Co.,* 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075; *Northern P. R. Co. v. Washington,* 222 U. S. 370, 378, ante, 237, 239, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid,* 222 U. S. 424, 436, ante, 257, 260, 32 Sup. Ct. Rep. 140.
>
> "But the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. This principle has had abundant illustration. *Chicago, M. & St. P. R. Co. v. Solan,* 169 U. S. 133, 42 L. ed. 688, 18 Sup. Ct. Rep. 289; *Missouri, K. & T. R. Co. v. Haber,* 169 U. S. 613,

42 L. ed. 878, 18 Sup. Ct. Rep. 488; *Reid v. Colorado,* 187 U. S. 137, 47 L. ed. 108, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Pennsylvania R. Co. v. Hughes,* 191 U. S. 477, 48 L. ed. 268, 24 Sup. Ct. Rep. 132; *Crossman v. Lurman,* 192 U. S. 189, 48 L. ed. 401, 24 Sup. Ct. Rep. 234; *Asbell v. Kansas,* 209 U. S. 251, 52 L. ed. 778, 28 Sup. Ct. Rep. 485, 14 Ann. Cas. 1101; *Northern P. R. Co. v. Washington,* 222 U. S. 370, 379, ante, 237, 240, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid,* 222 U. S. 424, 442, ante, 257, 262, 32 Sup. Ct. Rep. 140."

In *Missouri, Kansas and Texas Railway Company v. Haber,* 169 U. S. 613, Mr. Justice Harlan said (p. 623):

"May not these statutory provisions stand without obstructing or embarrassing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. *Sinnot v. Davenport,* 22 How. 227, 243."

In *Illinois Central Railroad Company v. State Public Utilities Commission of Illinois,* 245 U. S. 493, Mr. Justice Van Devanter stated the rule as follows (p. 510):

"In construing Federal statutes enacted under the power conferred by the commerce clause of

> the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested. *Reid v. Colorado,* 187 U. S. 137, 148, 47 L. ed. 108, 114, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Cummings v. Chicago,* 188 U. S. 410, 430, 47 L. ed. 525, 531, 23 Sup. Ct. Rep. 472; *Savage v. Jones,* 225 U. S. 501, 56 L. ed. 1182, 32 Sup. Ct. Rep. 715; *Missouri, K. & T. R. Co. v. Harris,* 234 U. S. 412, 419, 58 L. ed. 1377, 1382, L. R. A. 1915E, 942, 34 Sup. Ct. Rep. 790. This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."

In *International Shoe Company v. Pinkus,* 278 U. S. 261, Mr. Justice Butler said (p. 265):

> "The general rule is that an intention wholly to exclude state action will not be implied unless, when fairly interpreted, an Act of Congress is plainly in conflict with state regulation of the same subject. *Savage v. Jones,* 225 U. S. 501, 533; *Illinois Central R. R. Co. v. Public Utilities Commission,* 245 U. S. 493, 510; *Merchants Exchange v. Missouri,* 248 U. S. 365."

Finally, in *Chicago v. North Western Railway Company v. Lindell,* 281 U. S. 14, Mr. Justice Butler said (p. 18):

> "The Act (Interstate Commerce Act) ought not to be construed to put aside state laws and long established practice in respect to pleading unless the *intention* of Congress so to do is plain." (Emphasis supplied).

b. Intention of Congress as to union passenger stations.

In determining the *purpose* and *intent* of Congress on the subject of union passenger stations, reference may be had both to the proceedings of Congress during the consideration by it of the Transportation Act, 1920, and to the language of the Act itself.

Referring first to the proceedings before Congress, it is well known that while the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, 66th Congress, 1st Session, Vol. 58, p. 8578):

> "Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pages 8578-9) was to give the Interstate Commerce Commission jurisdiction

over union passenger depots. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 8579):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the state commissions, and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 8582).

This would seem to indicate that the Congress saw fit to leave the federal commission without mandatory

jurisdiction where passenger stations are to be erected on new sites, understanding that the matter of union stations would continue within the jurisdiction of the state commissions, subject only to certain findings to be made and certain certificates to be issued by the Interstate Commerce Commission.

Referring now to the language of the Act itself, this Court pointed out in the *Second Los Angeles Union Station Case, Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, that the Interstate Commerce Act nowhere refers specifically to union passenger stations.

Nowhere in the Act has Congress conferred on the Interstate Commerce Commission the power to require the construction of a union passenger station on a new site or of any of the essential incidents of such station.

On the contrary, the Act *expressly reserves to the states* the right to require just and reasonable freight and passenger *service* for intrastate business, except in so far as such requirement is *inconsistent* with any lawful order of the Interstate Commerce Commission made under the provisions of the Interstate Commerce Act. This proviso is a part of paragraph 17 of Section 1 of the Interstate Commerce Act and reads as follows:

> "Provided, however, That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for

> intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

On the subject of this proviso, the Supreme Court of North Carolina, in a passage quoted with approval by the Interstate Commerce Commission (100 I. C. C. 421, 428-9) said (*North Carolina Corporation Commission v. Southern Railway Co.*, 185 N. C. 435, 459, 117 S. E. 563):

> "We have examined the act of 1920 carefully, and we do not find any provision therein which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations. It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The right of the state, then, to act in this particular is expressly preserved to it by Transportation Act of 1920, page 402, subsec. 17 (41 Stat. at Large, p. 477) as follows: 'Provided, however, That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act.'"

In the light of the proceedings before Congress while the Transportation Act was being enacted, the language of the Act itself, and the decisions of this

Court in the *First* and the *Second Los Angeles Union Station Cases* (to which more detailed reference will hereinafter be made) we believe that it is clear that the jurisdiction of the states to make orders requiring the construction of union passenger stations on new sites was not taken away by the mere fact that before such orders may be effective, it is necessary for the Interstate Commerce Commission to have made the findings and issued the certificates which this Court specified in its decision in the *First Los Angeles Union Station Case.*

As the California Supreme Court said in reply to the argument of the carriers (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 462, R. 184, 192):

> "The most decisive answer to this question is that the language of the decision of the Supreme Court of the United States, in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission."

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3. THE RAILROAD COMMISSION'S ORDER DOES NOT CONTRAVENE THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION OR ANY PROVISION OF THE INTERSTATE COMMERCE ACT.

On pages 27 to 61 of their brief, the carriers urge that the Railroad Commission's order contravenes the

Commerce Clause of the Federal Constitution and certain provisions of the Interstate Commerce Act.

We submit that the California Supreme Court ruled correctly when it decided that there is no merit in these contentions.

a. Analysis of Railroad Commission's order.

The carriers first seek to make it appear that the Railroad Commission's order requires them to perform 7 different, distinct, separate and co-ordinate classes of acts (Joint Brief of Appellants, pp. 27-9).

Such is, of course, not the fact.

The order requires just one principal act, namely, the construction of a union passenger station. In so far as the other acts are to be performed at all, they are merely what this Court has aptly called the *"essential incidents"* of such station (*First Los Angeles Union Station Case,* 264 U. S. 331, 341).

The California Railroad Commission itself referred to these other matters as being merely "necessary and incidental" to the use of the passenger station (R. 119, 133).

It may aptly be said that these other acts are merely "the tail" which "goes with the hide".

b. The California Railroad Commission has not invaded a field occupied by Congress.

The carriers then seek to make it appear that the California Railroad Commission's order invaded a field occupied by Congress.

We submit that this is not the fact, either as to the union station itself or as to its "essential incidents".

(1) *Union Station.*

In *Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, this Court decided that Congress has not conferred upon the Interstate Commerce Commission the authority to require carriers to construct a union passenger station upon a new site.

The carriers now urge that in some way or other Congress has, nevertheless, so "occupied the field" as to preclude further action by the states.

If this argument is sound, the result will be that no public authority, either State or Federal, any longer has the authority, heretofore clearly possessed by the states, of requiring the construction of union passenger stations on new sites, however urgently the public convenience and necessity may require such construction.

We submit that this startling proposition is not the law and that the authorities cited by the carriers do not sustain their position.

It is true that in *Atchison, Topeka and Santa Fe Ry. Co. v. Railroad Commission of the State of California* (First Decision), 190 Cal. 214, the Supreme Court of California held that by reason of the enactment of the Transportation Act, 1920, the power and authority of the California Railroad Commission to make an order directing the Southern Pacific, the

Santa Fe and the Salt Lake to construct and operate a union passenger station in the City of Los Angeles had been *"divested"* and had become *"vested"* in the Interstate Commerce Commission. However, following this Court's decisions in the *First* and the *Second Los Angeles Union Station Cases,* the Supreme Court of California felt obligated to reverse and did reverse itself in the decision now before this Court on appeal.

The carriers also refer to the decisions of this Court in the *First* and the *Second Los Angeles Union Station Cases,* but we submit that those decisions are directly contrary to their contentions.

As we read those decisions, and as the Supreme Court of California read them, they hold that the jurisdiction of the California Railroad Commission continued and may be exercised and that its orders may become effective when the Interstate Commerce Commission has made the findings and issued the certificates specified by this Court in the *First Los Angeles Union Station Case.*

Thus, in the *First Los Angeles Union Station Case,* this Court said (264 U. S. 331, 346) that the situation comes

> "within paragraphs 18 to 21 of Section 402 and requires a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action of the carriers or *of any order by the State Commission.*" (Emphasis supplied.)

Again, at page 348, in the same case, this Court said:

> "Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto *as ordered by the State Railroad Commission.*" (Emphasis supplied.)

In the *Second Los Angeles Union Station Case,* this Court explained its first decision as declaring that the necessary certificates must first be secured from the Interstate Commerce Commission

> "as a condition precedent to the validity of any action by the carriers or *of any order by the State Railroad Commission,* and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto *as ordered by the State Railroad Commission.*" (Emphasis supplied). (*Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, 53).

In these references to an order of the State Railroad Commission, to be effective upon the making of the necessary findings and the issuance of the necessary certificates by the Interstate Commerce Commission, we believe that there is manifest a conviction on the part of this Court that Congress did not intend to take from the states the power to make such an order. Otherwise, we do not believe that this Court would have referred several times, in each of its two de-

cisions, to the authority of the State Railroad Commission as an existing and continuing jurisdiction.

In the light of these two decisions, we believe that there is now no longer any reasonable doubt that Congress, in enacting the Transportation Act, 1920, did not take from the State of California the jurisdiction to make the mandatory order which the California Railroad Commission actually made, to be effective upon findings to be made and certificates to be issued by the Interstate Commerce Commission.

This was the opinion of the California Supreme Court (79 Cal. Dec. 457, 462, R. 184, 192):

> "It is settled, therefore, by the highest judicial authority in the land, that the Transportation Act has not transferred to the Interstate Commerce Commission the power to make the order involved here.
>
> "It is urged, however, by petitioners that even though it be true that the Interstate Commerce Commission has no power to enter the order for the erection and maintenance of a union station, the fact that it has some powers given it over the general subject matter indicates that Congress 'has entered the field' of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject. The most decisive answer to this position is that the language of the decision of the Supreme Court of the United States in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the

proper findings and certificates of the Interstate Commerce Commission."

(2) *Essential Incidents of a Union Station.*

The carriers next urge that whatever may be said as to the union station itself, Congress has, nevertheless, occupied the field with respect to certain matters which, in the California Railroad Commission's order, are merely *incidental* to the construction of the union passenger station. These are matters such as extensions, improvements and changes, in so far as these matters are necessarily involved in the union station project (Joint Brief for Appellants, pp. 35-41).

In other words, the carriers now hope, as a last resort, to prevail in their opposition to public authority by reliance on a fancied purpose or intention of Congress to "occupy the field" as to the "essential incidents" of the union passenger station, even though it appears clearly that as to the station itself the field has not been thus occupied.

In reply, we invite the Court's attention to the following matters:

(1) The carriers have failed to point to any language in the Interstate Commerce Act granting to the Commission, in the matter of the construction of union passenger stations on new sites, the power to *require* the performance of any of said *incidental* acts.

While the Interstate Commerce Act contains, in various portions thereof, *general language* referring to the construction of facilities, the extensions and

abandonments of lines and the joint use of tracks, this Court very definitely held in the *Second Los Angeles Union Station Case,* in commenting on *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Company,* 271 U. S. 244, that such language is too general to be properly construed as referring to union passenger stations (*Second Los Angeles Union Station Case,* 280 U. S. 52, 66-7).

(2) To us, it seems clearly untenable to urge that while the states have retained the power to require the construction of union passenger stations, under proper circumstances, Congress has made this power nugatory by entering the field with reference to the "essential incidents" of such stations. There is no authority whatsoever in support of such contention and it impresses us as most illogical and unreasonable.

The carriers next quote authorities in support of the proposition that when Congress has occupied the field, a state statute is superseded even though the Federal statute does not cover the subject as fully and completely as the state law (Joint Brief for Appellants, pp. 42-54). We do not quarrel with those authorities. We believe that the only appropriate comment is that they are inapplicable for the reason, already shown, that Congress has not entered the field of mandatory construction of union passenger stations and essential incidents on new sites. All that Congress has done is to provide, quite wisely, that before the exercise of the power of the states shall be effec-

tive, the Interstate Commerce Commission shall have found the *facts* with reference to (a) the public convenience and necessity and (b) the financial ability of the carriers to undertake the project.

c. This is not a case of one commission giving effect to the orders of another commission or of divided authority in the same jurisdiction.

Finally, the carriers argue that this is a case of one commission giving effect to the orders of another commission, or of divided authority in the same jurisdiction.

Such is not the fact.

The authority of the Interstate Commerce Commission is purely *factual* and *permissive*. It *finds* and *certifies* to important facts in connection with the proposed union station construction. The function of the California Railroad Commission, on the other hand, is *mandatory* in character. The Commission *requires* that the union passenger station be constructed.

There is nothing unlawful or even unusual in the performance by these two governmental agencies of these distinct and separate functions.

This is simply one of many instances in which two public authorities, each acting lawfully within its own jurisdiction, must take favorable action before a certain result may be effected.

In the present instance, we have a particularly statesmanlike co-ordination of distinct and separate

functions as between the Federal and the State authorities.

A number of years ago, a somewhat similar situation involving action by both *state* and *municipal* authorities, came before the Supreme Court of California. In *Oro Electric Corporation v. Railroad Commission,* 169 Cal. 466, the Court drew attention to the fact that before a new electrical utility could do business within the City of Stockton, California, it would be necessary for it to secure both a certificate of public convenience and necessity from the Railroad Commission authorizing it to engage in business within the city and a franchise from the City of Stockton authorizing the use of its streets. At page 475, the court said:

> "The granting or withholding of the certificate is an exercise of the power of the *state* to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise which it is proposed to carry on for the service of the public. This is an entirely different question from that of the *local control* of the streets, and *power over the two subjects may well be vested at the same time in different governmental bodies, without the one in any way clashing with or interfering with the other.* The Railroad Commission might grant a certificate authorizing a public utility to engage in its business in a given city, but the certificate would not authorize the use of the streets, unless the right to so use them had been given by the authority vested with the power to grant such right."

Another somewhat similar situation involving concurrent action by the *Federal* government and by a *State* government came before this Court in *Cummings v. Chicago,* 188 U. S. 410. In this case, Mr. Justice Harlan said (p. 431):

> "The effect of that act (River and Harbor Act of March 3, 1899), reasonably interpreted, is to make the erection of a structure in a navigable river, within the limits of a state, depend upon the *concurrent or joint assent of both the national government and the state government.* The Secretary of War, acting under the authority conferred by Congress, may assent to the erection by private parties of such a structure. Without such assent the structure cannot be erected by them. But under existing legislation they must, before proceeding under such authority, obtain also the assent of the state acting by its constituted agencies." (Emphasis supplied).

To the same effect, see also

Montgomery v. Portland, 190 U. S. 89, 106;

State of Wisconsin v. State of Illinois, 278 U. S. 367, 412.

At page 55 of their brief, the carriers say that no power has been vested in the Interstate Commerce Commission which will permit it "to delegate any power which it may possess to a State Commission." There is, of course, no such delegation here. Each commission acts within its own jurisdiction and neither has attempted to delegate any of its jurisdiction to the other.

At page 59 of their brief, the carriers state that Congress did not intend to vest the Interstate Commerce Commission "with power to issue certificates for the purpose of giving validity to orders of State Commissions." We agree with this statement and submit that there is nothing to show any such intention on the part of Congress or any such action on the part of the Interstate Commerce Commission. The latter Commission simply acts in proper cases on the evidence submitted to it. What action a state commission may thereafter take is a matter as to which the Interstate Commerce Commission can have no knowledge and which has nothing to do with the exercise of the latter's jurisdiction.

We believe that we have now replied to every point of any significance made by the carriers in this portion of their brief and submit that there is nothing in the Railroad Commission's order which in any way contravenes the Commerce Clause of the Federal Constitution or any provision of the Interstate Commerce Act.

B.

INTERSTATE COMMERCE COMMISSION'S CERTIFICATES ARE VALID.

The carriers next present an argument to the effect that the certificates issued by the Interstate Commerce Commission are void (Joint Brief for Appellants, pp. 61-71),

We shall first invite attention to the findings and certificates which were actually issued. We shall then show that they are valid and that, in any event, the contention as to their invalidity can not be raised collaterally as here attempted.

1. THE CERTIFICATES DESCRIBED.

The Interstate Commerce Commission first made its *findings,* including the finding specified by this Court in the *First Los Angeles Union Station Case,* to the effect that "the expense involved therein will not impair the ability of the defendants to perform their respective duties to the public". Certificates were not at that time issued, but the Commission retained jurisdiction "for the purpose of making such further findings and orders and issuing such certificates as the record warrants" (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 460-1).

Thereafter, in its second decision, the Interstate Commerce Commission reaffirmed its *findings* and issued its *certificates,* including the certificate specified by this Court in the *First Los Angeles Union Station Case,* to the effect that "public convenience and necessity, present or future" require the extensions and abandonments incidental to the construction of the union passenger station.

Thus the Interstate Commerce Commission complied completely with the requirements as to *findings* and *certificates* theretofore specified by this Court.

The description of the certificates issued by the Commission, as such description is given by the carriers in their brief (p. 62) is inaccurate and inadequate.

Thus, as to *extensions,* the carriers refer only to "extension of main lines of railroad" (p. 62). They omit the words which follow immediately in the same clause and which show that these extensions are only such as are necessary

> "to reach and serve a *union passenger station* and termina' which they may construct in the Plaza district. * * *" (R. 154.)

As to *abandonments,* the carriers (p. 62) leave out most of the Commission's carefully worded certificate referring to such abandonments

> "as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal." (R. 154.)

In order that this Court may have before it a true and accurate statement of the Commission's findings and certificates, we show the *findings* in Appendix 2 and the *certificates* in Appendix 3 to this brief. See also R. 138-141, 145, 154-6, 153-4.

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2. THE CERTIFICATES ARE VALID.

In various forms, the carriers urge that the Interstate Commerce Commission had no jurisdiction to

issue the certificates except upon application of the carriers (Joint Brief for Appellants, 63-71).

A necessary corollary of this proposition is that in union passenger station cases before state commissions, the carriers can always defeat the public authorities by the simple device of failing to make application to the Interstate Commerce Commission for the necessary certificates.

The conclusive answer to this contention is that in the *First Los Angeles Union Station Case,* 264 U. S. 331, this Court, clearly understanding that the City of Los Angeles was before the Interstate Commerce Commission in an *adversary* proceeding, pointed out with much care and detail the authority of the Interstate Commerce Commission to issue the certificates. We believe that this Court would not have taken the pains to make its careful review of the subject if, in fact, the Interstate Commerce Commission has no such power in an adversary proceeding. That the Court fully understood the situation, appears from the last two paragraphs of its decision, reading as follows (264 U. S. 331, 347-8):

> "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

> "For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

In the *Second Los Angeles Union Station Case,* 280 U. S. 52, this Court had before it a record very clearly showing the *adversary* nature of the proceeding which the City of Los Angeles had brought before the Interstate Commerce Commission. After a second review of the situation, this Court held that its first decision decides that

> "until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be *required* to provide a new union station or to extend their main tracks thereto *as ordered by the State Railroad Commission."* (280 U. S. 52, 61.) (Emphasis supplied.)

We do not believe that this Court would have so expressed itself if the Interstate Commerce Commission did not, in fact, have the authority in the proceedings then pending before it, to issue such certificates.

That the Interstate Commerce Commission considered the certificates to be valid appears not merely from the fact that the Commission issued them but

also from the following note in the Digest entitled "Interstate Commerce Acts Annotated", recently published by the Commission under direction of Congress:

> "The Commission has authorized certificates of convenience and necessity under this paragraph (Sec. 1, Par. 19 of the Act) and Pars. (18), (20) and (21) in complaint proceedings, brought under the provisions of the Act, without application by the carriers and, in fact, against their objections." (Page 1042, Note 12—"Issuance of Certificate without application by carrier itself".)

The California Railroad Commission considered the certificates to be valid and upon the filing of the same (R. 4) denied the petitions of the carriers for rehearing.

The Supreme Court of California held that the certificates are valid and said (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 466, R. 184, 198):

> "The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission."

In the matter of findings and certificates, the Interstate Commerce Commission acted in exact accord with the decision of this Court in the *First Los Angeles Union Station Case,* and we submit that it is clear

beyond reasonable doubt that these findings and certificates, thus made and issued, are valid.

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3. THE VALIDITY OF THE CERTIFICATES CAN NOT BE ATTACKED COLLATERALLY.

These findings and certificates were made and issued by the Interstate Commerce Commission in a proceeding known as Docket No. 14,778, *City of Los Angeles v. Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railroad Company and Union Pacific Railroad Company.*

The defendant carriers all appeared and filed formal answers. Throughout the entire proceedings from the filing of the complaint in said Docket, in March, 1923, until the Commission's second decision on May 8, 1928, each of the carriers who is an appellant herein was a party to said Docket, with full opportunity to appear and be heard. Each of said carriers, in fact, participated actively throughout the proceedings.

With said Docket No. 14,778, the following applications of certain of said carriers were consolidated for hearing and decision:

(1) Finance Docket No. 3556—being an application of Southern Pacific Company and Southern Pacific Railroad Company for a certificate of public convenience and necessity authorizing the abandonment of lines and the abandonment of

certain main line freight and passenger service in Los Angeles, California; and

(2) Finance Docket No. 3569—being an application of Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company for a certificate of public convenience and necessity for the construction of new lines and extension of lines of railroad in Los Angeles, California.

In these applications, said carriers asked the Interstate Commerce Commission to issue certificates of public convenience and necessity to enable them to make *extensions* and *abandonments* in connection with *their* plan for solving the Los Angeles passenger terminal situation, which plan both the Interstate Commerce Commission and the California Railroad Commission found to be not in the public interest.

That the Interstate Commerce Commission had jurisdiction over the carriers in these proceedings can not be doubted. Likewise, not even the carriers would deny that the Commission had jurisdiction over the subject matter of the findings and certificates specified by this Court in the *First Los Angeles Union Station Case.*

Under the circumstances, it would seem to be elemental that the decision of the Interstate Commerce Commission can not be attacked collaterally.

Santiago v. Nogueraz, 214 U. S. 260, 267;
Doty v. Irwin, 168 Ill. 50, 47 N. E. 768;

Cromwell v. Hull, 97 N. Y. 209;
Reed v. Reed, 107 N. Y. 545, 14 N. E. 442;
Allen v. Huntington, 2 Aik. (Vt.) 249, 16 Am. Dec. 702;
Freeman on Judgments (5th ed.), 675-6, 679-80;
12 *R. C. L.* 864-5.

The carriers seek to justify their collateral attack by the following contention (Joint Brief for Appellants, p. 63):

> "Appellants could not by injunction or otherwise correct the Commission's action *because it was not mandatory* (emphasis supplied). *United States v. L. A. & S. L. R. Co.,* 273 U. S. 299."

In other words, the carriers base their claim that they can attack the Interstate Commerce Commission's certificates collaterally, on the proposition that they had no remedy, by injunction or otherwise, to correct the Commission's action.

As a matter of fact, the carriers could have filed in the appropriate District Court of the United States a bill for an order to set aside the Commission's certificates (28 U. S. C. A., secs. 45, 45a, 46, 47). Hence the entire foundation on which they base their claimed right to make a collateral attack falls, and their claim is shown to be without any merit whatsoever.

The test of the right to resort to the appropriate United States District Court is not whether the Interstate Commerce Commission's action was "*mandatory*" but whether it was "*affirmative*" in character.

This Court has declared the rule in a number of recent decisions in cases in which the Interstate Commerce Commission had issued certificates declaring that public convenience and necessity required an abandonment, acquisition of control or similar action.

Thus, in *The Chicago Junction Case,* 264 U. S. 258, the Interstate Commerce Commission had granted authority to the New York Central Railroad to acquire control of certain terminal railroads in Chicago. Certain objecting railroads filed a bill in the United States District Court against the United States, the Interstate Commerce Commission, the New York Central Railroad and the terminal railroads to have the order of authorization set aside and for an injunction. The defendants contended that the Commission's order was not subject to judicial review for the reason that it was merely *permissive* in character. This Court held that the fact that the order was merely *permissive* did not preclude review and referred to orders under the fourth section of the Interstate Commerce Act (long and short haul clause) as to which it has uniformly been held that a suit will lie to set aside the order (pp. 263-4).

Referring to *Procter & Gamble Co. v. United States,* 225 U. S. 282 and similar cases, in which it was held that an order of the Commission which *denied* affirmative relief was not subject to review, Mr. Justice Brandeis said (p. 264):

> "The Court declined to interfere, because to do so would have involved exercise by it of the

administrative function of granting the relief which the Commission, in the exercise of its jurisdiction, had denied. *Here the order complained of is an affirmative one. That is, it grants the relief sought.*" (Emphasis supplied.)

In *Colorado v. United States,* 271 U. S. 153, the Interstate Commerce Commission had issued a *certificate* authorizing the *abandonment* of a branch line of railroad in Colorado. The State of Colorado brought suit in the United States District Court to enjoin and set aside the order. At page 161, Mr. Justice Brandeis said:

> "*The remedy pursued is the appropriate one.* (Emphasis supplied.) See *Texas v. Eastern Texas R. R. Co.,* 258 U. S. 204."

In the very recent case of *Piedmont & Northern Railway Co. v. United States,* 280 U. S. 469, decided on February 24, 1930, the Interstate Commerce Commission had *dismissed,* on the merits, an application of Piedmont & Northern Railway Company for a certificate declaring that public convenience and necessity required the construction of proposed *extensions.* The Railway Company then filed in the United States District Court a suit for an injunction and an order to set aside the Commission's order of dismissal.

This Court pointed out that the Commission's action was entirely *negative* and that, accordingly, the case was not one in which the United States District Courts could issue an injunction. Mr. Justice Brandeis distinguished the case from those in which it has been

held that, on the *granting* of *certificates,* bills for injunction might be filed in the United States District Court and said (p. 478):

> "The case is entirely different from those where *an application for a certificate is alleged to have been erroneously granted,* as in *The Chicago Junction Case,* 264 U. S. 258 and *Colorado v. United States,* 271 U. S. 153. There a judicial review is provided in order to protect a legal right of the plaintiff alleged to have been infringed by an order which authorizes *affirmative* action." (Emphasis supplied.)

The case of *United States v. Los Angeles & Salt Lake Railroad Company,* 273 U. S. 299, the only case relied on by the carriers in this connection, does not help them. This Court there held that a "final value" of the property of a railroad company by the Interstate Commerce Commission is merely the statement of the result of an investigation and is not an "order" which may be reviewed. This Court expressly pointed out that the Commission's order is one "which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility"; and hence is not an *affirmative* act which may be tested by injunction (pp. 309-10). The Court thus reaffirmed the rule established in its prior decisions in cases of certificates of public convenience and necessity and added another case to those establishing the unsoundness of the position taken by the carriers.

Our case is one in which the Commission did grant an "authority, privilege or license". The carriers, accordingly, had the right to test the Commission's decision by a proceeding in the United States District Court. This they chose not to do. They can not now raise collaterally the issue which should have been raised, if at all, in a direct proceeding in the appropriate United States District Court.

This was the view of the Supreme Court of California when, in referring to this same claim of the carriers, it said:

> "We think this question is not properly raised here." (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 466, R. 184, 198.)

While we respectfully insist on the point that the carriers can not raise this issue collaterally, as they are seeking to do, we believe that the Court will not find it necessary to pass on the point for the reason that the findings and certificates issued by the Interstate Commerce Commission are lawful and valid.

C.

CALIFORNIA RAILROAD COMMISSION'S ORDER IS JUST AND REASONABLE AND DOES NOT DEPRIVE ANY CARRIER OF ANY RIGHT UNDER THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

The carriers devote the remaining portion of their brief (Points III and IV, pp. 72-117) to contentions

that in various respects the California Railroad Commission's order violates rights secured to them by the Fourteenth Amendment to the Federal Constitution.

These contentions are summarized on page 72 of the brief. Although the carriers make numerous *claims* as to matters of fact, we are amazed to find that, with the exception of a few references on pages 110 and 111, the 45 pages of their brief devoted to these claims contain no references whatsoever to the evidence in the Record herein.

The carriers merely make omnibus claims as to questions of fact, unsupported by any reference to the *facts* of the case as shown by the Record before this Court.

If the carriers desire to show that in any matter of fact their rights are being prejudiced, it is their duty to draw this Court's attention to the portions of the Record which they claim will support their claims. The burden of showing the order, on its facts, to be unreasonable and arbitrary is upon the appellant carriers (*New Orleans Public Service, Incorporated, v. City of New Orleans,* 281 U. S. 682, 686).

After the most painstaking and thorough investigations, the Interstate Commerce Commission and the California Railroad Commission have each *twice* found that these claims are without merit.

The Supreme Court of California, after its careful examination of the Record, found:

> "Extensive hearings were had upon this general problem and expensive investigations were

made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence" (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 465, R. 184, 196).

Continuing, the Supreme Court said (79 Cal. Dec. 457, 466, R. 184, 197):

"There is nothing unreasonable and arbitrary in the findings and order made."

In view of the failure of the appellant carriers to cite evidence in the Record in support of their claims, we believe that we are justified in insisting (what is the fact) that on controverted issues of fact the Record is in each instance against the contentions of the carriers.

Before turning to questions of law, we desire to submit the following comments, which are sustained by the findings and certificates of the Interstate Commerce Commission, the findings and order of the California Railroad Commission, the decision of the California Supreme Court and the Record before this Court, with reference to the general claims of the carriers appearing on page 72 of their brief:

(1) The statement of the carriers that their present terminal stations are adequate is not in accordance with the facts. The Salt Lake no longer has a station of its own. The Santa Fe's station is antiquated, wholly inadequate and lo-

cated in a scene of danger and the Santa Fe's officials have conceded that it must be rebuilt at a cost of $1,182,317. The Southern Pacific's Arcade station is overcrowded now during evening hours when important passenger trains leave, is rapidly becoming inadequate and is so located that all the passenger trains of the Southern Pacific Company must move through a scene of danger on and along Alameda Street in order to reach the depot.

Even if no *union* passenger station were constructed, the carriers would be under the necessity of expending millions of dollars in order to make their passenger facilities in Los Angeles safe and adequate.

(2) The only portions of their main lines of railroad which the carriers would be required to abandon would be a small mileage in connection with track rearrangements in the Los Angeles terminal, necessary and incidental in connection with the construction and operation of the union passenger station. The trackage of the Southern Pacific on Alameda Street would be retained for industrial freight switching at night, although every Southern Pacific official who has testified in this proceeding has agreed that the operation of passenger and main line freight trains on and along Alameda Street must be discontinued.

(3) Although it will be necessary for the carriers to acquire some additional lands and right of way, they already own 70 per cent of the 37

acres required for the Plaza site and the remaining lands are merely such parcels as are necessary to "round out" the site.

(4) The claim of the carriers that they will be required "to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve" is directly contrary to the facts. As will appear from the map which is Exh. 5 of the Railroad Commission of California (R. opposite p. 226), and as will hereinafter be explained in more detail, the present passenger stations of the carriers are located within the same section or portion of the City of Los Angeles as the site of the proposed union passenger terminal. The new union passenger station is to be built in the identical railroad and industrial district of the City of Los Angeles which the carriers have for years been serving by means of their tracks, trains and depots. There will be no extension into new territory.

(5) The carriers are in error in saying that the Railroad Commission's order requires the "joint use by one or more of the railroads of facilities owned by the others." A reading of the Railroad Commission's order will show that it contains no requirement whatever for the joint use of any existing railroad facilities (R. 119, 133).

(6) The only franchises or permits which it will be necessary for the carriers to secure will

be such as may be necessary to cross a few streets in the vicinity of the site of the proposed union station, so as to bring about the necessary track arrangements and the City of Los Angeles, by formal resolution of its City Council, now in full force and effect, stands ready to grant all such franchises and permits and to enact such ordinances for the opening or closing of all such public street areas as may be necessary to make the Railroad Commission's order fully effective. These franchises or permits are merely a small detail incidental to the improvement.

(7) While the improvements ordered by the Railroad Commission will, of course, cost money, *the total investment in passenger facilities under the Railroad Commission's decision will be less than it would have been under the carriers' own plan,* which both the Federal and the State Commission found to be not in the public interest. The carriers must expend several millions of dollars, in any event, to make their passenger facilities safe and adequate. They are being directed to expend substantially the same amount of money so as to eliminate duplication and secure the greater economy resulting from a single, unified passenger terminal.

Wherever it may seem appropriate, we shall hereinafter make specific references to the Record in connection with the above claims of the carriers. We be-

lieve the above statement sufficient for present purposes.

We shall now address ourselves to the fundamental principles of constitutional law relating to orders of public authority requiring the construction of union passenger stations and shall then reply directly to each proposition of law advanced by the carriers in Parts III and IV of their brief.

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1. UNDER THE POLICE POWER, PUBLIC AUTHORITY MAY REQUIRE THE CONSTRUCTION AND OPERATION OF UNION PASSENGER STATIONS WHENEVER THE POWER HAS BEEN CONFERRED AND, ON THE FACTS, SUCH ORDER WOULD BE REASONABLE.

a) Union passenger station decisions of state courts.

We shall now refer to quite a number of *union passenger station* cases which establish the above proposition, without a single decision to the contrary.

The carriers seek, on pages 82-89 of their brief, to distinguish or explain away these decisions but we are not convinced that their efforts have in any case been successful.

In *Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749, the Railroad Commission of Alabama ordered three railroad companies to construct a union passenger station upon a site selected by the Commission. The railroad companies were ordered to acquire said site by

purchase or condemnation. Complainant alleged that it had its own depot and had already arranged to construct a new and larger depot upon its own site. It averred that the Commission's order was unreasonable and arbitrary and deprived complainant of its property without due process of law in violation of the Constitutions of Alabama and the United States. The Court held that the Railroad Commission's order, made in the exercise of the state's police power, did not violate any provision of the State or Federal Constitutions, "notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot." On this point, the Court said (p. 752):

> "It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

The decision shows that the Commission directed the railroads to acquire a *new site* not then owned by any of the carriers and directed that, if it should become necessary, one of the three railroads, named in the order, should acquire the land either by purchase or by condemnation.

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13, the Railroad Commission of Alabama ordered 5 railroads to secure sufficient grounds within a specified territory in the City of Bessemer and to erect a union passenger depot thereon. The railroads having failed

to submit plans for the site of the passenger depot or to agree on the apportionment of the expense, the Commission issued a supplemental order fixing the location of the depot and apportioning the cost thereof and directing the railroads to acquire the site by purchase or condemnation. The Railroad Commission's orders were held valid.

On page 16 of the Reporter, the court said:

> "Unless the contrary is clearly shown, we will presume not only that the place prescribed is suitable, but that sufficient ground can be obtained, either by private purchase or by condemnation proceedings, at reasonable figures, for such station. Through the power of eminent domain which the law has conferred upon the railroad companies, they possess all the power which is necessary to acquire the needed lands at their fair value, and under the present state of the record, we must presume that the Railroad Commission has placed no unreasonable burden upon the railroad companies in so far as the acquisition of the needed ground for the station is concerned."

At page 18 of the Reporter, the court continued:

> "It would, however, create a strange anomaly for the courts to hold that a state has the authority to require all railroad companies operating railroads within a city, whenever the reasonable needs of the traveling public are such as to demand a union passenger station at that point, to use a union passenger station in said city, and at the same time deny to the state the power to re-

quire such companies to jointly acquire by purchase or by condemnation proceedings, sufficient land upon which to maintain the building and to jointly construct the necessary building. The two positions are inconsistent and cannot co-exist. If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise."

The carriers seek to minimize the effect of the decision (Joint Brief for Appellants, p. 83) by saying that "the power of the state to compel all railroads entering a given city to use a union station was conceded." However, the decision shows that the court made the following decisions in overruling contentions of the carriers to the contra:

(1) That public authority may require several railroad companies to acquire, either by purchase or by condemnation proceedings, new land for a union passenger station (64 So. 13, 15-16);

(2) That an order for the construction and operation of a union passenger station is not void because it directs the railroads to abandon their presently occupied and used separate depots and depot facilities (64 So. 13, 16); and

(3) That the several railroads may be jointly directed to purchase or condemn the new land for the union passenger station (64 So. 13, 18).

On the general question of the constitutional power of the legislature to authorize a state railroad commis-

sion to require the construction of a union passenger station and to select the site thereof, the court concluded (64 So. 13, 18):

> "It seems to us, therefore, that the Legislature had the constitutional power to vest in the Railroad Commission the authority which it conferred upon it in the above-quoted section 5545 of Code of 1907 * * * and that no part of said section is violative of any clause of the state or federal Constitution."

In *Mayor and Aldermen of Worcester, et al., v. Norwich and Worcester Railroad Company, et al.*, 109 Mass. 103, a statute of Massachusetts provided that 5 railroad companies should unite in a union passenger station in Worcester; that commissioners should select the site as between two sites named in the statute; that one of the railroads should erect the station with power to condemn, the other railroads paying rent; that after the completion of the station two specified railroads "shall respectively discontinue the present locations of their railroads in portions of the city of Worcester"; that all the railroad companies may and shall unite in the location and construction of one or more railroad tracks for their joint use; and that the railroads might each purchase or take such lands as might be necessary for their purposes.

The objecting railroads urged, among other matters, that to extend their railroads to the union station "would require the taking of much land from private persons for the location of the extensions, through

densely settled portions of a populous city"; that the construction of the tracks would involve great expenditures; that one track extension would have a length of over one mile; that some of the railroads would be required to discontinue without compensation valuable portions of their present locations; and that public convenience and necessity would not be served by the changes ordered by the statute.

The Supreme Judicial Court of Massachusetts held that the statute was a reasonable exercise of the right to alter, amend or repeal corporate charters, reserved to the Legislature, and at page 113 said:

> "It is no valid objection to such alterations that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose, and to incur additional expense. The power to extend their tracks is often granted at their own request, and is granted with no less propriety when the interests of the public require it."

The carriers seek to avoid the effect of this decision by a reference to *Superior Water, etc., Co. v. Superior,* 263 U. S. 125 and *Chicago, etc., R. R. Co. v. Wisconsin,* 238 U. S. 491, 501. The former decision does not have the effect ascribed to it by the carriers and it is not in point for them. The decision merely holds that a state legislature can not substitute an indeterminate permit provision for an existing *contract* between a city and a waterworks company. The police power was in no way involved. The latter decision

merely holds that the reserved power to alter or amend the charter of a corporation does not confer *arbitrary* power, or authorize the taking of the corporation's property *without compensation.* No one disputes this proposition but it is inapplicable here.

In *Dewey v. Atlantic Coast Line, et al.,* 142 N. C. 392, 55 S. E. 292, a number of citizens of Goldsboro, N. C., brought an action against 3 railroad companies to prevent obedience by them to an order of the Corporation Commission of North Carolina requiring the railroad companies to construct a union passenger depot on a specified site somewhat removed from the site of the existing depots. In upholding the statute under which the Corporation Commission acted and also the Commission's order, the court, at page 294 of the Reporter, said that the power of the Legislature to enact such statutes has been established by numerous well-considered cases. The court also drew attention to the fact that the railroads might use the power of eminent domain to acquire such new properties as might be necessary to enable them to carry out the Commission's order (p. 295).

The carriers (Joint Brief for Appellants, pp. 83-4) seek to overcome the effect of this decision by drawing attention to the fact that the action arose at the suit of third parties, namely, property owners, to enjoin the railroad companies from carrying out the Commission's order. However, the petitioning third parties raised the whole question of the authority of the Legislature to enact a statute conferring such union

passenger station powers on the Corporation Commission, and we submit that a decision on that issue is just as effective and significant in an action by these parties as it would have been in an action by the railroad companies or the Corporation Commission. The court held:

> (1) That the power of the Legislature to enact such statute has been established by numerous well-considered cases (55 S. E. 292, 294); and
>
> (2) That the power of the State to act is not limited to a case in which the railroads already own the site and the right of way leading thereto. If additional property is necessary, it can be acquired by the railroads under the power of eminent domain (55 S. E. 292, 295).

In *Missouri, O. & G. Railway Co. v. State,* 29 Okla. 640, 119 Pac. 117, it appeared that the Corporation Commission of Oklahoma had made an order directing Missouri, O. & G. Railway Company and two other railroad companies to erect and maintain a union passenger depot in Durant, Oklahoma, at a designated site. Appellant urged that the Commission's order would compel it to abandon a right of way and station grounds theretofore acquired by it; that it would lose a bonus of $10,000 which citizens of Durant had subscribed for the erection of a passenger station on said station grounds; that the Commission's order would require appellant to acquire a new right of way through private property; that it would necessitate an expenditure by appellant of not less than

$50,000; and that the order violated appellant's rights under the Constitution of the United States. In ruling against these contentions, the court at page 121 of the Reporter, held that the Commission's order might be sustained either under the reserved power to amend, alter or repeal the charters of corporations "or on the ground, as stated by Judge Brewer in *State v. Kansas City, etc., Ry. Co.*, 32 Fed. 722, that the same is a valid exercise of the police power of the state."

The carriers (Joint Brief for Appellants, p. 87) seek to distinguish the case on the ground that "that case was decided upon the authority of the Massachusetts case of *Mayor v. Norwich, etc.*, supra, which, as we have shown, is contrary to the decisions of the Supreme Court of California and of this Court." To this contention we make two responses as follows:

(1) The carriers have not shown that the Massachusetts decision is contrary to the decisions either of the Supreme Court of California or of this Court. In fact, this Court expressly cited the Massachusetts case with approval in *Wisconsin, Minnesota & Pacific Railroad v. Jacobson*, 179 U. S. 287, 302.

(2) The decision in the Oklahoma case was rested not only upon the Massachusetts case but also, in express words

> "on the ground, as stated by Judge Brewer in *State v. Kansas City, etc., Ry. Co.*, 32 Fed. 722, that the same is a *valid exercise of the*

police power of the state." (Emphasis supplied).

Whatever other sources of authority may exist, it is, of course, settled law that in all cases the valid exercise by public authority of the power to require the construction and operation of union passenger stations springs fundamentally from the *police power.*

In *State v. St. Louis Southwestern Railway Co., et al.,* (Tex. Civ. App.), 165 S. W. 491, the State of Texas asked that a writ of mandamus issue to enforce an order of the Railroad Commission of Texas directing the 3 defendant railroad companies to erect and maintain a union depot at Hillsboro, Texas. Judgment for the defendants was reversed and the case remanded for a new trial on issues of fact. At page 498 of the Reporter, the court said:

> "We have no doubt as to the constitutionality of the law requiring railroads to build union depots at such places and of such character as the Railroad Commission shall find necessary for the accommodation of the public, when it shall also have found the other facts required by the statute, but, if any doubt existed on the subject, it would be our duty to resolve it in favor of the statute."

Replying to the argument that the statute did not authorize the Railroad Commission to select the *site* of the proposed union depot, the court said (p. 498):

> "The statute explicitly grants the Commission the power to require railroads to build union de-

> pots, and that carries with it, by necessary implication, every power necessary to the accomplishment of such object. Courts ought not to resort to technicalities to override the clear import of a statute."

Answering the argument that the order of the Railroad Commission was void because it directed the construction of a union depot on a site owned by one of the railroads which refused to let in the others, the court said (p. 498):

> "But this is immaterial, as said appellees have the right to acquire, by condemnation proceedings, such interest in said land as is necessary for their depot purposes under the order of the Commission."

The carriers (Joint Brief for Appellants, p. 84) merely refer to this decision by saying that

> "the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised."

This contention of the carriers is obviously in error, as appears from the above-quoted language from the decision.

The principal contentions of the carriers in support of their claims under the Federal Constitution may be thus summarized:

1. The carriers can not lawfully be required to abandon any of their existing passenger facilities;

2. The carriers can not lawfully be required to acquire additional land by the exercise of the power of eminent domain;

3. The carriers can not lawfully be compelled to grant the use of any portion of their property to a rival railroad, even though compensation be first paid; and

4. No public authority can lawfully compel carriers to go to a new site within the same city and there erect a union passenger depot.

Each of these points has been decided, on numerous occasions, against the contentions of the carriers.

Without wearying the Court by further quotations from union depot cases, we shall merely cite the union depot decisions on each of these four points:

(1) *Abandonment of existing passenger stations and other facilities.*

The following decisions hold that an order for the construction of a union passenger depot, otherwise valid, does not lose its validity because it contemplates the abandonment by one or more railroads of their existing passenger stations and other passenger facilities. Practically every order for the construction of a union passenger depot involves the abandonment of one or more existing passenger depots adequate for that railroad alone.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 362, 64 So. 13, 16;

State v. Jacksonville Terminal Co., 71 Fla. 295, 331, 71 So. 474, 484;

Mayor & Aldermen of Worcester v. Norwich and Worcester R. R. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & Pac. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 830.

(2) *Acquisition of additional land by eminent domain proceedings.*

The following decisions hold that the fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 361, 64 So. 13, 15, 16;

Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co., 109 Mass. 103;

Dewey v. Atlantic Coast Line, 142 N. C. 392, 55 S. E. 292;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(3) *Use of property of rival railroad.*

The fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire the right to use the property of a rival railroad will not make such order invalid. The public authorities may, under their police power, make such orders.

Mayor & Aldermen of Worcester v. Norwich & Worcester R. R. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis S. W. Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(4) *Selection of new site.*

The fact that the public authority selects for the union passenger depot a *new site* on lands of third parties does not make the order invalid. Public authority has just as much power to select as a site the lands of third parties as lands already in railroad ownership.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern R. Co., 185 Ala. 354, 64 So. 13;

Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292.

(5) *Additional authorities.*

In the following additional cases, the right of the public authorities to order the construction and operation of union passenger stations, where the facts showed such order to be reasonable, was upheld.

State ex rel. Barton County v. Kansas City, Ft. S. & G. R. Co., 32 Fed. 722;

State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., 67 Fla. 441, 63 So. 729;

Griffin v. Southern Ry. Co., 150 N. C. 312, 64 S. E. 16;

Corporation Commission v. Seaboard Air Line Ry. Co., 161 N. C. 270, 76 S. E. 555;

North Carolina Corporation Commission v. Southern Ry. Co., 185 N. C. 435, 117 S. E. 563;

Missouri, K. & T. Ry. Co. v. State, 38 Okl. 401, 133 Pac. 35;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147.

In *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421, 425, the Interstate Commerce Commission, speaking of the effect properly to be given to the union passenger depot decisions of the state courts on which we rely, said:

"All parties concede that if we have the power to require the construction of a union station, it has come in the Transportation Act, 1920. Prior to that enactment such power was clearly in the

States. In numerous instances States had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such cases, where the facts reasonably come within the legislative enabling act, the State courts have upheld orders of the State commissions. The State courts have held the order could not be defeated (1) by showing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other passenger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad."

(NOTE: There follows, in a footnote, the citation of the decisions of the state courts on which we rely on the question of deprivation of rights guaranteed by the Federal Constitution. 100 I. C. C. 421, 426.)

The Supreme Court of California, in the decision now at issue herein, reached the same conclusion (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 464, R. 184, 195):

"It is also contended that the order, requiring as it does, the acquisition and dedication to public use of new property necessary for the construction of a union station and the abandonment of adequate facilities, deprives the petitioners of their property without due process of law and takes their property for public use without compensation, contrary to the constitutional guaran-

tees of the United States and of the State of California. That contention is not a new one, but has been passed upon by numerous state tribunals, contrary to the contention of the railroads herein, noticeably in the cases of *State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., et al.*, 67 Fla. 441; *Griffin v. Southern Ry. Co.*, 150 N. C. 312; *State ex rel. Corporation Commission v. Seaboard Air Line, et al.*, 161 N. C. 270; *State ex rel. Corporation Comm. v. Southern Ry. Co., et al.*, 185 N. C. 435; *Gulf, S. F. Ry. Co. v. State*, 167 S. W. 192; *Railroad Commission v. Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission v. Alabama Great Southern R. R. Co.*, 185 Ala. 354; *Mayor, etc. v. N. & W. R. R. Co.*, 109 Mass. 103; *State v. St. L. S. Ry. Co.*, 165 S. W. 491; *W. M. & P. Co. v. Jacobson*, 179 U. S. 287.

"The foregoing decisions also answer the contention of petitioners that the erection of a union station is a matter of business policy and management and not a proper subject for control under the police power of the state."

b. Decisions of Supreme Court of United States.

With a few exceptions, the foregoing cases have all been union passenger station decisions of state courts.

We desire now to refer to a number of important decisions of this Court.

In *Wisconsin, Minnesota and Pacific Railroad v. Jacobson*, 179 U. S. 287, the Railroad and Warehouse

Commission of Minnesota had made an order directing two railroad companies to make track connections. The carriers objected on the ground, among others, that in order to construct a connecting track it would be necessary for the company "to go outside of its right of way and to condemn land for that purpose" (p. 291). This Court affirmed the order. The carriers here say (Joint Brief for Appellants, p. 86), that the case is not in point. We rely on the case to meet the contention of the carriers that they can not be compelled to acquire *new land,* not now owned by them, for the purpose of erecting a union passenger station thereon. In holding a similar contention to be unsound, this Court in the *Jacobson* case, held that the order of the Minnesota Commission was valid "although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain" (179 U. S. 287, 302).

In the very recent case of *New Orleans Public Service, Incorporated v. City of New Orleans,* 281 U. S. 682, decided on June 2, 1930, this Court held that a city ordinance requiring a street railway company to tear down and *abandon* a viaduct and to construct and operate its tracks at grade across 8 tracks of the Southern Railway Company did not violate any right of the carrier under the Fourteenth Amendment (p. 686). The Court held that the ordinance came properly within the scope of the police power (p. 686).

At page 687, this Court said:

> "It is elementary that enforcement of uncompensated obedience to a regulation passed in the legitimate exertion of the police power is not a taking of property without due process of law. *Chicago, B. & Q. Railroad v. Chicago,* 166 U. S. 226, 251; *C., B. & Q. Ry. v. Drainage Commissioners,* 200 U. S. 561, 594; *Chicago & Alton R. R. v. Tranbarger,* 238 U. S. 67, 77."

Continuing, the Court said (p. 687):

> "The sacrifice of the old structure and the cost of the new crossings involve a large amount of money. But the evidence fails to show that, having regard to the circumstances, it is so large that the regulation must be held to pass the limits of reasonable judgment and amount to an infringement of the right of ownership."

Finally, in the *First Los Angeles Union Station Case* (264 U. S. 331), the carriers made in full detail precisely the same arguments with reference to the violation of the Fourteenth Amendment which they now again urge. If, by reason of any provision of the Federal Constitution, no public authority has any power to order the construction of a union passenger station in Los Angeles, we believe that this Court would have said so, whereupon the case would have been ended. However, this Court acted upon the assumption that the appropriate public authority *does* have the power, under the circumstances here shown, to order the construction of a union passenger station

and, accordingly, proceeded to point out, with great care and in considerable detail, the findings to be made and the certificate to be issued by the Interstate Commerce Commission before such order could be made.

We believe that we are justified, under the circumstances, in adding the decision of this Court in the *First Los Angeles Union Station Case* to the long line of union passenger station cases holding that where the power has been conferred and, on the facts, the order would be reasonable, a state may require the construction and operation of a union passenger station without violating any right of the carriers under the Fourteenth Amendment to the Federal Constitution.

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2. THE AUTHORITIES ON WHICH THE CARRIERS RELY ARE NOT IN POINT.

At pages 73-82 and 90-93 of their brief, the carriers cite a number of decisions in support of their contention that the California Railroad Commission's order deprives them of rights under the Fourteenth Amendment to the Federal Constitution.

On analysis, it will be found that these decisions either establish general principles which no one denies or are cases in which a public authority undertook to require a public utility to extend its service into a *new territory* which it had never held itself out as willing to serve. These latter cases are, of course, inapplicable to the facts of the present case.

Referring first to general principles, no one, as far as we know, denies that a carrier can not have imposed upon it "burdens that are not incident to its engagement" (*Northern Pacific v. North Dakota,* 236 U. S. 585, 595); or that "a state may not require property devoted to one public use to be applied to a different public use" (*Broad River Power Co. v. South Carolina,* 282 U. S. 187, 189); or that carriers can not reasonably be required "to make connections at every point where their tracks come close together * * * regardless of the amount of business to be done, or the number of persons who may utilize the connection if built" (*Oregon, R. & N. Co. v. Fairchild,* 224 U. S. 510, 528); or that a carrier can not be required "to deliver cars and freight received from one state to another at a particular place and in a particular manner" (*McNeill v. Southern Railway Company,* 202 U. S. 543); or that property "shall not be taken for such (public) use without compensation" (*Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 415).

Turning now to requirements that extensions be made into *new territory* which the public utility or carrier has never held itself out as ready or willing to serve, a very brief consideration of the *facts* of the present case will show that these decisions are not at all applicable here.

The map of the Railroad and Industrial District of Los Angeles which is Exh. 5 of the California Railroad Commission and which appears opposite page 226 of the Record, and the Plan for Union Passenger

Terminal at the Plaza which is California Railroad Commission's Exh. 4B and which appears opposite page 266 of the Record, show the site of the proposed union passenger station in relation to the existing tracks and passenger depots of the carriers.

As appears from the map first referred to, the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under a single bridge or viaduct over the Los Angeles River, known as the North Broadway Viaduct, at the entrance to the city from the north. The two former lines are located under said viaduct along the west bank of the river and the latter line along the east bank. The point at which said tracks of said carriers run under the North Broadway Viaduct is located only approximately three-fourths of a mile distant northerly from the site of the proposed union passenger terminal.

As also appears from said map and plan, the Santa Fe's main line tracks run directly across the site of the proposed union passenger terminal near the west bank of the river, the Southern Pacific's main line tracks run across the site along Alameda Street and the Salt Lake's branch line track lies along the east bank of the river, directly across the river from the site.

Said map also shows that the present passenger stations of all three railroads are located within the same section or portion of the industrial district of the city as the site of the proposed union passenger terminal,

the Southern Pacific passenger depot being within approximately one mile of the proposed site, the Santa Fe's depot within less than a mile and the Salt Lake's former depot (now burned) within only about half a mile.

What the California Railroad Commission's order requires is merely a regulation in the public interest, under the police power, of the passenger service which these carriers have for many years been performing by means of their tracks, trains and depots in this identical railroad and industrial district of the City of Los Angeles.

The inapplicability of the decisions cited by the carriers will now be readily apparent.

In *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California,* 173 Cal. 577, the Supreme Court of California annulled an order of the Railroad Commission of California directing the Santa Fe to construct and operate a line of railroad between Oceanside in San Diego county and Temecula in Riverside county, California. The order could have been complied with either by constructing twelve miles of new railroad between Fallbrook and Temecula or by an alternative line of thirty-three miles of new construction between San Luis Rey and Temecula. The Court held that the California Commission's order, contemplating the construction of a *new line of railroad* a number of miles in length *into territory not theretofore served by the railroad,* would require the dedication of the rail-

road's property to a new service (p. 582), and hence annulled the order. While conceding that *a railroad company "may be compelled to furnish proper stations for the reception and discharge of passengers and freight"* (p. 585), the court held that what was required by the California Commission's order was that the Santa Fe "build a new line of road to tap or supply a territory which has not theretofore had the benefit of direct railroad service" (p. 586). These facts, are, of course, entirely different from the present situation in which it appears that for many years the carriers have held themselves out as serving the City of Los Angeles with adequate passenger service and where what is directed is merely a relocation within the same general section of the same city of passenger depot facilities, for the purpose of rendering more adequately and satisfactorily the very service which the carriers have for many years undertaken to give to the public.

In *Pacific Telephone and Telegraph Co. v. Eshleman,* 166 Cal. 640, the Supreme Court of California annulled an order of the Railroad Commission of California directing the Pacific Telephone and Telegraph Company to construct a physical connection between its lines and those of two independent telephone companies and to transmit telephone messages thereover. The court held that the Pacific Company had never dedicated its property to such use by rival telephone companies and that for this reason the California Commission's order went beyond the police power and

constituted a taking of property. No such questions arise here. The carriers have dedicated their property to an adequate passenger service in the City of Los Angeles and hence are subject to regulation of that service in the public interest under the police power. If any existing railroad property will be jointly used, compensation will, of course, first be paid.

As the facts show that the rendition of adequate passenger service and the construction of convenient passenger facilities within Los Angeles are clearly "within the use to which the property (of the carriers) has been dedicated" (166 Cal. 640, 677), the present proceedings come clearly within the rule established in the Telephone Case, which hence becomes authority for the Railroad Commission and not for the carriers.

In *Hollywood Chamber of Commerce v. Railroad Commission of California,* 192 Cal. 307, another case cited by the carriers, the petitioner sought by writ of mandate to compel the Railroad Commission of California to hear and determine a complaint in which the California Commission was asked to direct the Los Angeles Railway Corporation to construct *ten and one-half miles* of double track into Hollywood—*a territory which the railway corporation had never undertaken to serve.* Under well established principles, the Court, of course, denied the writ. The case is on all fours with the case of *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California,* 173 Cal. 577, and, like it, has no application to the facts of the present proceedings.

The carriers also rely on a separate, concurring opinion of Chief Justice Shaw in *Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission of California,* 190 Cal. 214, 228, but this was an individual opinion which was not concurred in by any other member of the court, which has never been the law, and which was properly disregarded by the Supreme Court of California in the decision now before this Court.

In the proceeding before the California Supreme Court from which the present appeal has been taken, the carriers relied upon the foregoing California decisions, but the court found that they were inapplicable.

At pages 76 and 77 of their brief, the carriers cite two Federal decisions in cases of orders requiring extensions into *new territory,* but these decisions do not fit the facts of the present case. In *Southern Bell Telephone & Telegraph Co. v. Town of Calhoun,* 287 Fed. 381, the General Assembly of South Carolina had enacted a joint resolution requiring a telephone company to establish and maintain a telephone exchange for the convenience of "other communities" which "were not served" by the company. In the recent case of *Oregon-Washington Railroad & Navigation Company v. United States,* decided by the District Court of the United States for the District of Oregon on January 29, 1931, the court held that the provisions of the Interstate Commerce Act may not be so construed as to authorize the Commission to require carriers to construct a line of railroad a distance

of 185 miles from east to west more than half-way across the State of Oregon through territory which the carriers have never held themselves out as willing to serve.

We need not pause to point out the utter inapplicability of such cases to the facts of the present case.

At pages 81 and 82, the carriers list a number of decisions of state courts. With the exception of the last two decisions, those cases do no more than to reiterate the well established rule that natural gas, electric power, telephone and street railway companies may not be required by public authority to extend their systems to serve cities and towns and communities which they have never held themselves out as willing to serve. These cases add nothing to the present appeals.

The last two cases, *People ex rel. Delaware & Hudson Co. v. Stevens,* 197 N. Y. 1, 90 N. E. 60 and *People ex rel. Binghampton Light, Heat & Power Co. v. Stevens,* 203 N. Y. 7, 96 N. E. 114, are not even cases of extensions of public utility systems. They are cases of security issues in which it was held that under the Public Service Commission Law of New York, as it was then worded, the Public Service Commission of the Second District was not empowered to disapprove a proposed issue of railroad securities, if the securities were to be issued for one of the purposes authorized by the statute.

We invite attention to the fact that the carriers have been unable to find a single *union passenger sta-*

tion case in support of their position. Their cases are all either cases of general principles which no one disputes or of situations so far removed on their facts from the present case as not to be helpful here. None of these decisions in any way detract from the effect of the long line of *union passenger station cases* which are directly in point here and which, without a single dissent, support the order of the California Railroad Commission and the decision of the Supreme Court of California here on appeal, on the issue of the Fourteenth Amendment to the Federal Constitution.

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3. THE CARRIERS ARE IN ERROR IN URGING THAT THE RAILROAD COMMISSION'S ORDER REQUIRES THE JOINT USE OF ANY OF THEIR PROPERTY WITHOUT COMPENSATION FIRST PAID.

At pages 94 to 103 of their brief, the carriers state that the Railroad Commission's order requires the *joint use* by one or more carriers of existing tracks and other properties of other carriers. They then claim that the order is unlawful because it does not specify the compensation to be paid to a carrier whose property is to be thus jointly used.

As is so frequently the case throughout their brief, the carriers make general statements or claims without referring to the Record to ascertain what the *facts* really are.

As a matter of fact, the Railroad Commission's order does not direct or require any joint use of any

existing carrier property. Hence this contention of the carriers is seen to be without any merit whatever.

The directory or mandatory portions of the Railroad Commission's order appear on pages 133 and 134 of the Record. The order requires the carriers to construct and thereafter operate a union passenger station within a designated area

> "together with such tracks, connections and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein."

The order contains no requirement whatever for the joint use of any existing property.

It is true that among the *findings* of the Railroad Commission is one (6) on the subject of such joint use of existing carrier properties "as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station * * *" (R. 132) but whether any existing tracks or property of any carrier will be jointly used in connection with this project is as yet highly problematic.

There is always the alternative of separate approach tracks leading to the site of the union station grounds, which will obviate the necessity of any joint use.

The situation was understood and tersely stated by this Court in the *First Los Angeles Union Station*

Case, 264 U. S. 331, 340, as appears from the following statement:

> "The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for three miles, a *joint use* by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, *or the construction of its own main tracks on one side or the other along the river bank.*" (Emphasis supplied.)

Which alternative will be adopted does not as yet appear, for the reason that the carriers have not as yet prepared their plans.

If these plans hereafter provide for the construction by each carrier of its own main tracks, the question will not arise.

If the plans provide for the joint use of any existing tracks or other property and the carriers agree on such use and the compensation to be paid, the question will not arise.

Unless the Railroad Commission hereafter directs a joint use, the question will not arise. Whether the Railroad Commission will hereafter make such order, is at this time entirely uncertain.

This particular bridge can be crossed when, if ever, it is reached and it will be assumed that if the bridge is ever reached it will be crossed by the Railroad Commission with due regard to the constitutional rights of the carriers.

In the meantime, we respectfully request the Court to bear in mind that *the Railroad Commission's order has not ordered or required any joint use of any existing property of any carrier.*

In view of the mistake of *fact* made by the carriers in assuming, contrary to the fact, that the Railroad Commission's order directs or requires the joint use of any existing carrier property, we believe it unnecessary to comment on the cases cited by them further than to say that they are not applicable to the facts as shown by the Record herein.

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4. THERE IS NO FOUNDATION FOR THE CONTENTION OF THE CARRIERS THAT THE RAILROAD COMMISSION ACTED UNDER THE GUISE OF EXERCISING POWER OVER RAILROAD GRADE CROSSINGS.

At pages 103 to 112 of their brief, the carriers make some observations, based principally on earlier decisions of the California Railroad Commission, to the effect that the Railroad Commission acted in pursuance of its authority to eliminate unsafe railroad grade crossings.

The only order of the Railroad Commission now before this Court is the order of July 8, 1927 (R. 119-134). This is a complete order and stands on its own feet. In important respects, this order differs from earlier orders.

The order of July 8, 1927, directs the carriers to construct a union passenger station and appurtenances. It was made in pursuance of the Commission's authority over railroad passenger equipment and service and the safety of railroad passenger operations.

It is true that a safe, adequate and satisfactory railroad passenger service requires more than an adequate building on a sufficiently large tract of land. The Supreme Court of California pointed out (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 465, R. 184, 196) that

> "an adequate building alone will not constitute adequate passenger terminal facilities, but that *a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal.*"

The Railroad Commission's order does not require the *separation of grades* along Alameda Street or any other action usually taken for the elimination of grade crossings. While the order provides (R. 133-4) that after the construction of the union passenger station the operation by the Southern Pacific of its trains on and along Alameda Street, except certain industrial freight switching service, shall cease, this is a situation which, at least as far as the passenger trains are concerned, will followed automatically from the construction of the union passenger station north of the present operations on Alameda Street, making

it unnecessary for the passenger trains any longer to operate on and along Alameda Street.

The point which we desire to emphasize is that the order now under review by this Court was made in the exercise of the Railroad Commission's authority over passenger train service, equipment and safety and not by reason of its authority over railroad grade crossings. That the result of the exercise of that power will be to solve also the highly difficult and dangerous Alameda Street situation, to the great benefit of the carriers and the city alike, is a most fortunate circumstance but, as stated, it is a result which will follow from the action taken by the Railroad Commission in the exercise of its authority over *railroad passenger service, equipment and safety.*

The Southern Pacific also urges (Joint Brief for Appellants, pp. 105-6) that the Railroad Commission should have made an express finding that the existing passenger station facilities of said company are inadequate. In reply to this contention, we invite the Court's attention to the following matters:

(1) The existing passenger terminal facilities are, in fact, inadequate, as is shown by the Record in this case and, in effect, was found by the Railroad Commission in its findings Nos. 7 and 10 (R. 119-132-3).

(2) The finding required by Section 36 of the Public Utilities Act is *not* that the existing structure is *"inadequate"* but that the "additions, extensions, repairs or improvements to, or changes

in, the existing plant, equipment, apparatus, facilities or other physical property * * * *ought reasonably to be made,* or that a new structure or structures *should be erected to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities* * * *." The Commission made these findings (Nos. 3, 4, 5, 6, 7, 10) (R. 119, 131-3).

In closing their discussion on this point, the carriers refer to *Atlantic Coast Line R. Co. v. North Carolina Corporation Commission,* 206 U. S. 1. In this case, the Corporation Commission of North Carolina had made an order directing two railroad companies to so rearrange their passenger train schedules as to restore a schedule connection at Selma. The testimony showed that compliance with the Commission's order would require the operation of an additional passenger train by one of the carriers, with a daily operating loss. This Court sustained the order of the Corporation Commission on the ground, among others, that it is the duty of carriers "to make reasonable connections with other railroads, so as to promote the convenience of the traveling public" (p. 22). We do not understand how the carriers can derive any comfort from this decision.

5. THE CONTENTIONS OF THE CARRIERS (a) THAT THE SOUTHERN PACIFIC IS BEING DIRECTED TO TAKE ACTION FOR THE PURPOSE OF PROVIDING THE SANTA FE AND THE SALT LAKE WITH ADEQUATE PASSENGER DEPOTS AND (b) THAT THE SANTA FE AND THE SALT LAKE ARE BEING DIRECTED TO TAKE ACTION FOR THE PURPOSE OF ELIMINATING THE SOUTHERN PACIFIC'S GRADE CROSSINGS ON ALAMEDA STREET ARE CONTRARY TO THE FACTS AND WITHOUT ANY MERIT.

Finally, at pages 109 to 117 of their brief, the carriers, in their points IV(a) and IV(b), claim (a) that the Southern Pacific is being directed to take action to provide the Santa Fe and the Salt Lake with a passenger depot and (b) that the Santa Fe and the Salt Lake are being directed to take action to eliminate the Southern Pacific's grade crossings along Alameda Street.

These claims are being made in the face of a record to the contrary and were found by the Supreme Court of California to be without merit.

As a matter of fact, each of the carriers is being directed to take action for the purpose of remedying *that carrier's own existing inadequacies* in passenger terminal facilities and operation and not because of the inadequacies of any other carrier.

The carriers made these same contentions before the Supreme Court of California. That Court considered the claims carefully and found that they are without merit. Referring first to the Southern Pacific's situation, the Court said (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commis-*

sion of the State of California, 209 Cal. 460, 79 Cal. Dec. 457, 464-5; R. 184, 195-6):

"The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan unde-

sirable and the application of the carriers to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence."

Referring then to the Santa Fe and the Salt Lake, the court continued (79 Cal. Dec. 457, 465; R. 184, 196-7):

"It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station, the primary purpose of which is to accomplish the removal of the tracks of the Southern Pacific Company from Alameda Street, a matter with which they are unconcerned. The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay

because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It can not be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public."

By way of supplement to the Court's conclusions, we submit the following matters:

a. Santa Fe.

The Santa Fe's passenger depot in Los Angeles is antiquated and wholly inadequate for present and future needs (*Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421, 432, 454; *Municipal League v. Southern Pacific Company, et al.*, R. 84, 88; Exh. 1 of California Railroad Commission, pp. 90, 242-3, separately certified and forwarded, R. 7; Sachse, R. 260).

It would cost $1,182,317.00 to construct an adequate passenger terminal for the Santa Fe alone at the present site (Ball, R. 228; Exh. 3 of Santa Fe, R. 229-30).

To these facts must be added the further important fact that the Santa Fe's present site is located in a scene of danger to the public for the reason that substantially all members of the public who have occasion to use the present depot can do so only by crossing Alameda Street and the main line tracks of the Southern Pacific located thereon. The site is inconvenient and difficult of access and dangerous to the

public desiring to use it (Exh. 5 of California Railroad Commission, opposite R. 226).

Hence, the Railroad Commission's order against the Santa Fe was made for the purpose of remedying that carrier's own existing inadequacies in passenger terminal facilities and not because of the inadequacy of any other carrier's facilities.

b. Salt Lake.

The Salt Lake has no passenger depot of its own in Los Angeles and is using the Southern Pacific's Arcade Depot merely as a temporary matter, under permission of the Railroad Commission, for the reason that a fire did some damage to the Salt Lake's wooden depot formerly located east of the Los Angeles River. In order to reach the Arcade Depot, the Salt Lake operates all its passenger trains on and along Alameda Street from Butte Street on the south to the Arcade Depot on the north, at grade, across many important public streets. (Exh. 5 of California Railroad Commission, opposite R. 226).

These operations of the Salt Lake have greatly accentuated the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street (*Municipal League v. Southern Pacific Company, et al.*, R. 119, 128; Mott, R. 242).

If, when the Salt Lake's present temporary use of the Southern Pacific's Arcade passenger depot ceases, the Salt Lake should return to its land on the east bank of the Los Angeles River and build a separate passenger depot there, the cost of such depot and fa-

cilities would be between $750,000 and $1,000,000 (Knickerbocker, R. 279).

That the Salt Lake should take that action is almost unthinkable, but, if so, the same situation with reference to crossing the scene of danger on and along Alameda Street which exists in connection with the present passenger terminal site of the Santa Fe would be equally applicable to the Salt Lake.

It is clear that, as to the Salt Lake, also, the Railroad Commission's order was made for the purpose of remedying that carrier's own existing inadequacies in passenger terminal facilities and not because of the inadequacy of any other carrier's facilities.

c. **Southern Pacific.**

The Southern Pacific claims that there is no evidence in the record to show that its present passenger facilities are in any respect inadequate and argues that it is being directed to take action either to eliminate the dangerous grade crossing situation on and along Alameda Street or to help correct the existing passenger inadequacies of the Santa Fe and the Salt Lake. As we shall show, these contentions are without merit.

In this connection, the Southern Pacific's chief reliance is on a statement of the California Railroad Commission that the Arcade depot thereafter to be erected would be efficient and ample to provide for the probable passenger traffic of a city several times "the present size" of Los Angeles and on several statements in Exh. 1 of the California Railroad Com-

mission (Sachse Report). (Joint Brief for Appellants, pp. 109-11).

However, we invite the Court's attention to the following facts:

(1) The Railroad Commission's statement was merely a *prediction* made on November 25, 1913, prior to the erection of the Arcade building, more than 17 years ago, at a time when the population of Los Angeles was less than 400,000 (Exh. 56 of California Railroad Commission, opposite R. 302). The 1930 census shows a population of 1,238,048. In 1913, no one foresaw the enormous subsequent increase in the population of Los Angeles and the Railroad Commission is not to be chided for having "guessed wrong" (*Application of Southern Pacific Company,* Vol. 3, Opinions and Orders of Railroad Commission of California, pp. 927, 929-30).

(2) The statements relied on by the carriers in Exh. 1 of California Railroad Commission (Sachse Report) were written about 12 years ago, in 1919—the date of the Report is July 31, 1919—at a time when the population of Los Angeles was less than 600,000.

(3) The more recent testimony in the present Record shows that the Arcade station building has actually reached its capacity or that its capacity will be reached in a very short time.

Richard Sachse, former chief engineer of the California Railroad Commission, who wrote the report of 1919 relied on by the carriers, testified in 1926 (R. 260):

> "An inspection of the latter station (Southern Pacific Arcade station) any day of the year in peak traffic hours will establish the fact that it either has actually reached its capacity or that capacity will be reached in a very short time, and especially as far as the convenience of the public is concerned."

A. G. Mott, the present chief engineer of the California Railroad Commission, testified in 1926 (R. 253):

> "Frequent observation on my part indicates that there is a very definite tendency toward overcrowding the waiting room at this station between the hours of 7 and 8 P. M. just prior to the departure of such important trains as the Padre, Lark and Sunset Limited, and I am thoroughly convinced that, entirely aside from a theoretical consideration of station waiting room capacities, the present waiting room at the Arcade Station will prove to be entirely inadequate for the combined operations of the Southern Pacific and the Salt Lake for peak periods of travel within ten years. I do not see how the waiting room capacity at the Arcade Station could be increased except at a very large expense and at the sacrifice of necessary space for other incidental station facilities, such as baggage room and mail handling facilities, etc."

(4) The *site* of the Arcade Depot is narrow and its expansion would be difficult and expensive.

Expansion would require the relocation of Alameda Street with the closing or separation of grades at Fourth Street, or the elevation of station tracks — all expensive and attended by the destruction of permament buildings (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 435-6; Mott, R. 253, 303; Sachse, R. 261; Hawgood, R. 273).

(5) Finally, as the California Supreme Court pointed out (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 465, R. 184, 196), *an adequate building alone does not constitute adequate passenger facilities.* As the court said (R. 184, 196):

> *"A satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal."* (Emphasis supplied.)

Applying this principle to the present situation, the court continued (R. 184, 196):

> *"The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination."*: (Emphasis supplied.)

The failure of the Southern Pacific to meet this test of adequate, convenient and safe

> passenger terminal facilities and operations is so overwhelmingly and conclusively established as to preclude the necessity of further discussion.

We believe that it is now abundantly clear that as to the Southern Pacific, also, the Railroad Commission's order was made for the purpose of remedying the carrier's own existing inadequacies in passenger terminal facilities and operations and not because of the inadequacies of any other carrier.

d. Sharing the cost.

When it comes to the question of sharing the cost of the new union passenger terminal between the three carriers, then, as pointed out by the California Supreme Court (79 Cal. Dec. 457, 465; R. 184, 197)—

> "it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It can not be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public."

As already pointed out, specific machinery for the division of such costs by the Railroad Commission, in the event the carriers are unable to agree, has been set up by Section 36 of the Public Utilities Act.

V. Conclusion.

In conclusion, we submit, very respectfully, that the points urged by the appellants are each and all without merit and that the decision of the Supreme Court of California herein under review should be affirmed.

Dated at Los Angeles, California, this 4th day of April, 1931.

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(APPENDICES FOLLOW.)

Appendix 1.

CITATIONS OF THE VARIOUS LOS ANGELES UNION STATION DECISIONS.

1. *First Decision of California Railroad Commission* (R. 24-84; on rehearing, R. 84-96).

   Los Angeles Union Station Case—Volume 19, Opinions and Orders of the Railroad Commission of California, page 740—April 26, 1921; on rehearing, Volume 20, page 937—December 6, 1921.

2. *First Decision of Supreme Court of California* (R. 97-111).

   Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California, 190 Cal. 214—December 19, 1922.

3. *First Decision of Supreme Court of United States.*

   Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331—April 7, 1924.

4. *First Decision of Interstate Commerce Commission* (R. 225; Exh. No. 5 of City of Los Angeles, separately transmitted as original exhibit, R. 7).

   City of Los Angeles v. Los Angeles & Salt Lake Railroad Company, et al., (Los Angeles Passenger Terminal Cases) 100 I. C. C. 421—July 6, 1925.

5. *Second Decision of Railroad Commission of California* (R. 119-134: decision here under review).

   Los Angeles Union Station Case, Volume 30, Opinions and Orders of the Railroad Commission of California, page 151—July 8, 1927.

6. *Second Decision of Interstate Commerce Commission* (R. 135-156).

   City of Los Angeles v. Los Angeles & Salt Lake Railroad Company, et al., (Los Angeles Passenger Terminal Cases), 142 I. C. C. 489—May 8, 1928.

7. *Decision of Court of Appeals of District of Columbia.*

   United States ex rel. City of Los Angeles v. Interstate Commerce Commission, 34 Fed. (2d) 228—February 25, 1929.

8. *Second Decision of Supreme Court of the United States.*

   Interstate Commerce Commission v. United States of America, at the Relation of the City of Los Angeles, 280 U. S. 52—November 25, 1929.

9. *Second Decision of Supreme Court of California* (R. 184-198: decision from which present appeal was taken).

   Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California, 79 Cal. Dec. 457—May 27, 1930.

Appendix 2.

FINDINGS OF FACT OF CALIFORNIA RAILROAD COMMISSION AND INTERSTATE COMMERCE COMMISSION.

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles.

"2. That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the city of Los Angeles, as described in the Application No. 3346 and in the record adduced herein.

"3. That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the city of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes

incidental to the convenient and proper operation of such union passenger station and terminal.

"4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

"5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, or of the operation of all or any portion of the present train service thereon, as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

"6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city

described in paragraph three (3) above, is in the public interest and is practicable, without, in our opinion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

"7. That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

"8. That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

"9. That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

"10. That said construction ought reasonably to be made."

(NOTE: For the Railroad Commission's findings, see Volume 30, Opinions and Orders of the Railroad Commission of California, pages 151, 160-1; R. 118, 131-3.)

The first six of the foregoing findings had theretofore been made by the Interstate Commerce Commission (100 I. C. C. 421, 459-60; Exh. 5, City of Los Angeles, forwarded with the return).

The last four findings were found by the Interstate Commerce Commission to have "sufficient support in the record" (142 I. C. C. 489, 496; R. 135, 145).

The Interstate Commerce Commission also found that the plan for a station within the Plaza area is "in the public interest". See *Interstate Commerce Commission v. United States at relation of City of Los Angeles*, 280 U. S. 52, 63. This unnumbered finding or conclusion is found in 100 I. C. C. 421, 461 and was adhered to, together with all the other findings, in 142 I. C. C. 489, 496; R. 135, 145.)

Appendix 3.

CERTIFICATES ISSUED BY INTERSTATE COMMERCE COMMISSION.

"It is hereby certified, That the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company of extensions of their respective main lines of railroad in the City of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defend-

ant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal."

(NOTE: These certificates are a part of the "Certificate and Order" issued by the Interstate Commerce Commission in its second decision in the *Los Angeles Passenger Terminal Case* (142 I. C. C. 489; R. 153-4.)

Appendix 4.

SECTION 36, PUBLIC UTILITIES ACT OF CALIFORNIA.
(St. 1915, Chapter 91, pages 115, 134.)

Sec. 36. "Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the Commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities

shall have such reasonable time as the Commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."